

WESTERN DISTRICT OF WASHINGTON
FEDERAL BANKRUPTCY COURT AT TACOMA

In re:

HERBERT L. WHITEHEAD, III,

Debtor.

KENNETH WREN and ALICE WREN, husband
and wife;

Plaintiffs.

V.

HERBERT L. WHITEHEAD III, individually; and
the marital community of HERBERT L.
WHITEHEAD III and JENNIFER L.
WHITEHEAD;

Defendants.

COME NOW Plaintiffs Kenneth and Alice Wren (hereinafter "Wren"), and for their complaint against defendants Herbert L. "Butch" Whitehead III, individually, and the marital community of Herbert L. Whitehead III and Jennifer L. Whitehead, allege the following facts and causes of action.

ADVERSARY COMPLAINT

- 1

**LAW OFFICES OF
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I. JURISDICTION

1.1 This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §1334(b) and Local Civil Rule 87 of the U.S. District Court for the Western District of Washington. This is a core proceeding within the meaning of 28 U.S.C. §157(b)(2), including §157(b)(2)(H), (I) and (J).

1.2 Venue is proper in the U.S. District Court for the Western District of Washington under 28 U.S.C. §1409.

II. PARTIES

2.1 Plaintiffs Kenneth and Alice Wren are husband and wife. They reside in Lake Tapps, Pierce County, Washington.

2.2 Defendant Herbert L. Whitehead III, also known as Butch Whitehead, resides at 2419 199th Ave. Ct. East, Lake Tapps, Pierce County, Washington 98391 with his wife, Jennifer L. Whitehead. All of the acts of defendant Herbert L. Whitehead that are complained of herein were, on information and belief, taken in the interests of Herbert "Butch" Whitehead's individual and marital estates.

2.3 Nonparty Stanford and Sons, LLC (“Stanford”) is a Washington Limited Liability Company. It is a defendant in the underlying Washington state court action known as Kenneth and Alice Wren v. Stanford and Sons, LLC, et al., Pierce County Superior Court Cause No. 20-2-04347-3 (“Pierce County Action”). At the times relevant hereto, Stanford did business under the trade name “Puyallup Car and Truck” (“PCAT”). PCAT sold used cars from a location at 701 2nd St. NE, Puyallup, WA 98372-3012. On information and belief, Stanford’s sole owner and member is Kenneth Brautigan.

2.4 Nonparty David G. Whitehead is the child of defendants Herbert and Jennifer Whitehead. He frequently uses his middle name of "Gage". Until recently he resided in Lake Tapps, Pierce County, Washington with his parents. On information and belief he was born in 1996, is single and continues to reside in Pierce County, Washington.

1 2.5 Nonparty J & N Investments Inc. (“J & N”) is a Washington corporation doing
2 business in both Snohomish and Pierce County. According to the records of the Washington
3 Secretary of State, Henry L. Russell, his wife Victoria L. Russell, and their son Jayson Russell
4 are the sole members of J & N. J & N does business under the trade name “Bulldog Auto Sales
5 & Service” (“Bulldog”). J & N’s Washington state records list two business locations, one at
6 9922 SR 532, Suite B, Stanwood, WA 98292-8084, and the other at 701 2nd St. NE, Puyallup,
7 WA 98372-3012. On information and belief, J & N represents is a wholesaler of automobiles,
8 rather than a retail dealer.

9 2.6 Nonparty Henry L. Russell is an owner and a governing person of Nonparty J &
10 N. In addition to Henry Russell, two other governing persons are identified for J & N,
11 specifically his wife Victoria L. Russell and their son Jayson Russell. Henry Russell is also
12 known by the nickname “Murphy.”

13 2.7 Nonparty Southwest Enterprises, LLC, is a Washington limited liability
14 company owned by defendants Herbert and Jennifer Whitehead, with a business location in
15 Pierce County, Washington, and real property in Arizona.

16 2.8 Nonparty Mt. View Enterprises, LLC is a Washington limited liability company
17 owned by defendants Herbert and Jennifer Whitehead, with a business location in Pierce
18 County, Washington.

19 2.9 Nonparty Whitehead Consulting, LLC is a Washington limited liability
20 company owned by defendants Herbert and Jennifer Whitehead, with a business location in
21 Pierce County, Washington.

22 2.10 Nonparty Whitehead Enterprises, LLC is a Washington limited liability
23 company owned by defendants Herbert and Jennifer Whitehead, with a business location in
24 Pierce County, Washington. In form and effect, the evidence leads to the conclusion that
25 Whitehead Enterprises, LLC is the alter ego of defendants Herbert and Jennifer Whitehead.
26

2.11 Nonparty Duward William Frame, IV at the times relevant to this suit resided in Seattle, King County, Washington, and worked in Pierce County.

2.12 Nonparty First Horizon Home Loans, a Division of First Tennessee Bank N.A., its successors and assigns (hereinafter “First Horizon”), is a lender with a first and second deed of trust on real property located in Lake Tapps, Washington, which property is the subject of the cause of action for judicial foreclosure. Because First Horizon’s first and second position deeds of trust are superior to plaintiff’s third-position of trust, First Horizon is named for notice purposes only.

2.13 Nonparty First Nicholas LeClercq and Susan LeClercq Family LLC, formerly
dba First LeClercq LLC, and now known as the Totem Lake Warehouse LeClercq LLC
(hereinafter “LeClercq”), held a judgment against defendants Herbert L. Whitehead III and
Jennifer Whitehead dated May 11, 2010, in the amount of \$245,634.77, together with interest,
costs and attorneys’ fees, which judgment was also filed on May 11, 2010.

III. FACTS

A. Loans to Stanford and Sons, LLC

1. The Wrens' \$1,200,000 Loan

3.1 To the extent legitimate, the objective of Stanford and Sons, LLC was to operate a business buying and selling used automobiles under the trade name “Puyallup Car and Truck” (“PCAT”). In early 2016, however, Stanford and Sons had insufficient capital with which to operate its business. Stanford and Sons therefore looked for a source of capital. As a part of that search for money, Kenneth Brautigan asked Kenneth and Alice Wren to make Stanford and Sons a \$1,200,000 loan. Defendant Herbert “Butch” Whitehead was directly involved on behalf of PCAT in that request for a loan as well.

3.2 Plaintiff Kenneth Wren had known Brautigan for many years, had recently sold his own car dealership, and was open to considering the loan request. During the period when plaintiffs were considering this request for a loan, defendant Butch Whitehead presented

1 himself to plaintiff Kenneth Wren as being an owner/partner of Stanford and Sons, along with
2 Brautigan. During the negotiations in early 2016, Ken Brautigan's step-father was terminally
3 ill. Mr. Brautigan has testified that he spent weeks of sleepless nights helping to provide
4 hospice care for his step-father until he passed away on approximately February 22, 2016. As
5 testified to during Mr. Brautigan's Pierce County Action deposition, defendant Butch
6 Whitehead took over the negotiations for presenting Stanford and Sons' expansion plan into,
7 not only wholesale vehicle sales, but also retail auto sales. Defendant Butch Whitehead was
8 the primary person who put forward the documentation that was provided to Kenneth Wren to
9 convince Mr. Wren to loan Stanford and Sons flooring funds for their expansion. That
10 documentation took the form of a 58-page "Explanation of Pro forma and 2016 Projections"
11 that has been produced in the Pierce County Action bates stamped 2016 PF&P 000001 to 58.

12 3.3 As a part of the security offered to plaintiffs in exchange for a loan to Stanford
13 and Sons, defendant Whitehead suggested that a home in Arizona be offered as part of the
14 security for ultimate repayment. Plaintiffs understood that that home in Arizona used to belong
15 to the Whiteheads personally, and that through a series of transactions had been transferred to
16 Stanford and Sons, LLC. In addition to the real property in Arizona, Kenneth Brautigan,
17 Stanford and Son, and defendant Butch Whitehead offered a variety of other assets as security.
18 Because the proceeds of the loan were to be used in large part to purchase inventory, the parties
19 viewed it as a "flooring" loan which typically involves the grant to the lender of a security
20 interest in all inventory. Accordingly, the parties agreed that the Wrens would have a security
21 interest in all inventory and other assets of Stanford and Sons, LLC, dba Puyallup Car and
22 Truck.

23 3.4 In both justifiable and reasonable reliance on all of the representations of
24 Kenneth Brautigan, Stanford and Son, and defendant Butch Whitehead, including the Pro
25 Forma at 2016 PF&P 000001 to 58, plaintiffs agreed to loan Stanford and Sons \$1,200,000,
26 conditioned as stated above upon the receipt of a wide variety of liens and other security. On

1 March 2, 2016, Stanford and Sons, LLC, signed a promissory note for \$1,200,000, pursuant to
2 which terms plaintiffs Kenneth and Alice Wren loaned the stated sum to Stanford and Sons. As
3 stated in that promissory note, payments were interest only, with a balloon payment of the
4 principal amount due on March 2, 2017. A true and accurate copy of that promissory note,
5 bates stamped KW 000027, is attached hereto as Exhibit 1.

6 3.5 The March 2, 2016 promissory note was not paid in full on March 2, 2017.
7 Instead, Stanford and Sons continued to make interest-only payments. Stanford and Sons had
8 been providing certain financial statements to the plaintiffs up to that point, including the
9 Balance Sheets and Income Statements for June, July and November 2016, which showed the
10 company making a profit. (*See* Bates Stamped documents Audit – 000061 – 72.) Following
11 the March 2, 2017 default on the terms of repayment, plaintiffs Wren, Stanford and Sons,
12 Kenneth Brautigan, and defendant Butch Whitehead discussed rolling the loan over into a “line
13 of credit” of some sort. On July 20, 2017, defendant Whitehead wrote to put a positive spin on
14 the condition of Stanford and Sons, and he stated that “I am not apposed [sic] to that but would
15 like to see the terms you come up with.” With that email, defendant Whitehead also provided
16 what he represented as being Stanford and Sons inventory. (Audit 000018 - 20.) On July 25,
17 2017, and on behalf of plaintiffs Wren, Ms. Nicola Lee Bley Asquith, aka Nikki Bley, wrote to
18 Ken Brautigan to request a variety of financial materials, including business and personal tax
19 returns, six months of bank statements, the 2016 Year End profit and loss and balance sheet,
20 and the current year’s (i.e., 2017) monthly and year-to-date financial statements. (Audit
21 000021.)

22 3.6 In response to Ms. Bley, Mr. Brautigan passed the ball to Butch Whitehead.
23 (Audit 000023.) This was done, reasonably enough, because both the documentary evidence
24 and oral deposition testimony obtained in the Pierce County Action establish that defendant
25 Butch Whitehead was in charge of the financial operations of Stanford and Sons, including
26 providing specific directions to the company bookkeeper Stephanie Townsend on how to

1 allocate income and expenses in the company's "AutoDealer Plus" accounting system. On July
2 31, 2017, Butch Whitehead wrote to Ms. Bley to state that Brautigan's 2016 tax return, which
3 would include the financial results of Stanford and Sons, were not complete as Brautigan had
4 requested an extension. But, Whitehead said the return would be provided when complete.
5 (Audit – 000025, 26. Through discovery, the Wrens have determined that Brautigan's 2016
6 taxes were not completed by CPA Norm Smith until April 19, 2018. NRS 001945.) Defendant
7 Butch Whitehead also affirmatively represented that "we are profitable". (Audit 000027.)
8 And, he provided Balance Sheets and Income Statements (printed on August 1, 2017) for year
9 end 2016 and the first half of 2017 representing that Stanford and Sons was profitable. (Audit
10 000077 – 86.)

11 3.7 Eventually, on January 1, 2018, Stanford and Sons, LLC, executed an Amended
12 Promissory Note that rolled the March 2, 2016 loan for \$1,200,000 into a term loan payable at
13 the rate of 6% a year, with the full sum of principal and interest due five years thereafter. In the
14 event of a default, interest increased to 16% per annum. Plaintiffs Wren agreed to this
15 refinancing of the original loan in both justifiable and reasonable reliance on all of the
16 representations, both written and oral, received to that date from defendant Butch Whitehead,
17 Stanford and Sons, Mr. Brautigan, and other agents of Stanford and Sons like Stephanie
18 Townsend. A true and accurate copy of that promissory note, bates stamped KW 000047, is
19 attached hereto as Exhibit 2.

20 3.8 All payments on the January 1, 2018 promissory note were made as required
21 through July 1, 2019, in the amount of \$19,887 per month. On July 16, 2019, Kenneth
22 Brautigan informed plaintiffs that Puyallup Car and Truck was closing and that Stanford and
23 Sons could not continue to make payments on the loans. Consistent with that notice, Stanford
24 and Sons defaulted on its August 1, 2019 payment. As of the date of default, Stanford and
25 Sons owed plaintiffs \$960,028.23, plus interest accruing at 16% per annum. Brautigan's
26 announcement came as a surprise to Mr. Wren because Stanford and Sons had generally been

1 making its loan payments on time, and the payments made by Stanford on the \$1,200,000 were
2 typically in an amount that was more than the required minimum. During this phone call, Mr.
3 Brautigan offered to surrender all of the collateral covered by the security agreements to the
4 Wrens as a partial repayment of the loans, including the vehicles that made up that collateral,
5 the books, records and other assets of Stanford and Sons, LLC.

6 **2. The Wrens' \$500,000 Loan**

7 3.9 In early 2017, before the March 2, 2017 due date when the original \$1,200,000
8 loan was supposed to be repaid in full, Stanford and Sons requested an additional \$500,000
9 loan from plaintiffs, also for use in Stanford and Sons' used car business. As mentioned above,
10 the Wrens had been provided with Balance Sheets and Income Statements for June, July and
11 November 2016, which showed the company making a profit. (*See* Bates Stamped documents
12 Audit – 000061 – 72.) Also as previously alleged, those Balance Sheets and Income
13 Statements had been prepared under the direction and control of defendant Butch Whitehead.

14 3.10 In both justifiable and reasonable reliance on all of the oral and written
15 representations received by the Wrens to that date, plaintiffs agreed to extend this additional
16 loan. As a result, on February 24, 2017, Stanford and Sons, LLC, signed a promissory note for
17 \$500,000 to evidence that debt and to set the terms of repayment. As stated in that promissory
18 note, interest accrued at 8% per annum, with minimum monthly payments of \$12,206.46 per
19 month, with a balloon payment of the unpaid principal plus interest due four years later on
20 February 24, 2021. A true and accurate copy of that promissory note, bates stamped KW
21 000012, is attached hereto as Exhibit 3.

22 3.11 Payments were made on the February 24, 2017 promissory note through July 11,
23 2019, with the last payment of \$12,206.46 being paid at that time.

24 3.12 Again, on July 16, 2019, Mr. Kenneth Brautigan, informed plaintiffs that PCAT
25 was closing and that Stanford and Sons could not continue to make payments on the loans.
26

1 Stanford and Sons has, in fact, defaulted on its payment obligations. Stanford owes plaintiffs
2 \$227,844.66, plus interest accruing at 16% per annum, under this \$500,000 promissory note.

3 **3. Security for the Stanford and Sons Loans**

4 3.13 As previously indicated, each of the two foregoing loans to Stanford and Sons
5 was secured through a number of mechanisms. One mechanism was a personal guaranty of
6 both notes by Kenneth Brautigan and his wife Jessica Brautigan.

7 3.14 In addition to the personal guaranties of the Brautigans, Stanford and Sons
8 executed a Commercial Security Agreement and a Pledge Agreement for each of the two loans
9 now in default. Those security agreements expressly defined the Collateral subject to being
10 sold or transferred to satisfy the promissory note debts, and further, expressly authorized the
11 filing of a UCC 1 Financing Statement. That UCC 1 was filed on March 7, 2016, under File
12 Number 2016-067-3187-3. By filing that UCC 1, plaintiffs perfected their security interest in
13 the following collateral:

14 All goods, inventory (vehicles, parts, and accessories), motor vehicle title
15 documents, chattel paper, accounts, furniture, fixtures, equipment, investment
16 property, instruments, commercial tort claims, all other tangible and intangible
property, and general intangibles including goodwill and proceeds of sale of
the same.

17 (Exhibit 4, KW 000075.) This broadly-written security interest was intended to be just that,
18 and it was expansive enough to include within its scope the security interests Stanford and Sons
19 held to secure the debts owed to it by other individuals, here most specifically debts owed by
20 defendants Herbert “Butch” Whitehead and his marital community to Stanford and Sons, as
21 further secured by a Deed of Trust on the Lake Tapps Real Property.

22 3.15 In addition to the personal guaranties of the Brautigans and the collateral subject
23 to the above-quoted UCC 1, Stanford and Sons, LLC executed a Deed of Trust and Assignment
24 of Rents to the Wrens over a piece of property located in Maricopa, Arizona, with a street
25 address of 39903 N Long Landing Ct., Anthem, Arizona 85086, to secure the \$1,200,000 loan.
26

1 Upon Stanford and Sons' default, Stanford and Sons Quit Claimed that property to the Wrens.
2 (Exhibit 5, KW 000067 - 70.)

3 3.16 At the time of default on these loans, there were approximately twenty-eight
4 (28) motor vehicles, one boat, two trailers, motorcycles and skidoos owned by Stanford and
5 Sons, dba Puyallup Car and Truck, that were supposed to be in inventory and subject to the
6 Wrens' security interest. Consistent with Stanford and Sons' underlying agreement, on July 24,
7 2019, Stanford and Sons executed a Bill of Conveyance in Lieu of Foreclosure that executed on
8 plaintiffs' security interests, thereby transferring ownership and legal title to the
9 aforementioned collateral to plaintiffs Wren. (Exhibit 6, KW 000005 - 11.) At that point, the
10 collateral subject to plaintiffs' security interests became the property of the plaintiffs.

11 3.17 In addition to the foregoing surrender and transfer of assets by PCAT, the
12 Brautigans personally, voluntarily surrendered and transferred to plaintiffs Wren significant
13 personal assets, leaving them as of the time of the filing of the Pierce County Action potentially
14 judgment proof. On information and belief, those circumstances have not materially changed.

15 3.18 Through the voluntary surrender of the Brautigan's personal assets and the
16 readily available assets of Stanford and Sons, plaintiffs Wren hope to recover approximately
17 \$500,000 to \$600,000 to apply to the principal debt of \$1,187,872.89, plus interest, fees and
18 costs. Those recoveries are, however, subject to offset by ongoing legal expenses, plus accrued
19 interest. Given the uncertainty of the net value of those recoveries, plaintiffs Wren moved in
20 the Pierce County Action for a summary judgment order holding Stanford and Sons liable for
21 \$1,187,872.89, plus prejudgment interest accruing at the rate of 16% per annum from August 1,
22 2019. That motion was granted, and a summary judgment was so filed in the Pierce County
23 Action, on October 4, 2021.

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1 **B. Stanford and Sons Defaults; Plaintiffs Investigate the Causes of Loss**

2 **1. Plaintiffs' Efforts to Mitigate Their Damages; Confrontation with Butch**
3 **and Gage Whitehead**

4 3.19 On Tuesday, July 16, 2019, prior to the execution of **Exhibit 6**, plaintiff
5 Kenneth Wren, at the advice of Kenneth Brautigan, went to Puyallup Car and Truck's business
6 location to take possession of the collateral securing the loans, including PCAT's inventory.

7 When plaintiff Kenneth Wren arrived, Butch Whitehead and Gage Whitehead were there.
8 Brautigan, Butch Whitehead and Gage Whitehead had been arguing, with Brautigan wanting to
9 deliver the collateral to plaintiffs, and the Whiteheads demanding that the collateral be given to
10 them. Because of the real risks of a physical altercation, Brautigan had called the Puyallup
11 Police to intervene. Brautigan left after the police arrived.

12 3.20 The mere presence of Butch and Gage Whitehead at the PCAT business location
13 on July 16, 2019 was not particularly surprising to Wren because, as previously stated, Butch
14 Whitehead was directly involved in the requests for the loans to Stanford and Sons, and in the
15 day-to-day operation of PCAT. Illustrative of that involvement is defendant Butch
16 Whitehead's email dated February 5, 2016, which provided the title report and other
17 information on the real property at 39903 N. Long Landing Court, Anthem, AZ 85086.
18 (Exhibit 7, KW 000263.) That real property was provided as partial security for the \$1,200,000
19 loan. Also, both the Wrens and the Whiteheads live on Lake Tapps, and they know of each
20 other within the confines of what is a relatively small community within Pierce County.

21 3.21 While the physical presence of Butch and Gage Whitehead at PCAT was not a
22 particular surprise to Ken Wren, the demands and arguments of the Whiteheads were
23 unexpected. In short, while the Wrens' security agreements reflected plaintiffs' secured
24 position as the legal owner of all PCAT's personal and business property, the Whiteheads were
25 contending that a portion of PCAT's inventory and other assets was somehow really Butch or
26 Gage's property. As events developed over the ensuing months, the Whiteheads' arguments in

1 this regard solidified on the position—now formally admitted both in this bankruptcy and in
2 state court—that the collateral then present at PCAT supposedly belonged to Gage Whitehead.

3 3.22 During this July 16, 2019 verbal altercation at PCAT’s business location, there
4 were 12 vehicles in particular that were the subject of the demands of the Whiteheads. Six of
5 these vehicles had already been safely removed for the benefit of the plaintiffs before the
6 Whiteheads arrived at the scene. Because of the need to keep the peace, and because the
7 dispute could not be resolved in that setting, plaintiff Kenneth Wren proposed a temporary
8 resolution that involved the plaintiffs retaining physical possession of six of the vehicles, while
9 the Whiteheads took possession of the remaining six, even though the records indicated that all
10 12 were legally owned by Stanford and Sons, were properly the assets of Stanford and Sons,
11 and thus were subject to the Wrens’ security interests. Plaintiff Wren and the Whiteheads
12 agreed to that temporary resolution, and the peace was thereby preserved without plaintiffs
13 Wren having waived any of their legal or equitable rights to any of that property.

14 3.23 In addition to the vehicles, a 2012 Pontoon boat, its trailer, a 2015 Chevy
15 Duramax truck, and a classic 1977 Ford F150, were all titled in Stanford and Sons name, but
16 they were stored at Butch Whitehead’s property, or were being used by defendant Whitehead to
17 pursue PCAT’s business interests. These items were therefore subject to the Wrens’ collateral
18 rights and are listed on Exhibit 6. Nonparty Gage Whitehead now contends that he has an
19 interest in those items of personal property, while defendant Butch Whitehead has relinquished
20 all claims to the same.

21 3.24 As previously mentioned, and consistent with plaintiffs’ rights as secured
22 creditors, on July 24, 2019, the Wrens and Stanford and Sons, LLC, executed the Bill of
23 Conveyance In Lieu of Foreclosure that transferred ownership of this property to plaintiffs.
24 (Exhibit 6.)

25 3.25 Later that month, defendant Butch Whitehead met with plaintiff Kenneth Wren
26 and attorney James Aiken at Mr. Aiken’s law office. Defendant Whitehead expressed the

1 desire to keep and buy the 2015 Chevy Duramax truck, which he had been driving for work.
2 Defendant Whitehead also said that his family had a vacation planned on the Columbia River
3 for August 3 and 4, 2019, and he asked plaintiff Wren if they could borrow the boat for that
4 vacation. Plaintiff Wren and defendant Whitehead further discussed and agreed that the boat
5 and trailer were worth roughly \$50,000, and if the Whiteheads were allowed to use it for that
6 vacation, they would buy the boat and trailer at that price upon their return. Plaintiffs Wren and
7 defendant Whitehead agreed to this proposal related to the boat and trailer. Attorney Aiken,
8 however, expressed concern about the Whiteheads taking the boat unless it was insured, and
9 Butch Whitehead agreed to buy insurance. Unfortunately, consistent with his behavior as
10 described throughout this complaint, upon returning from Eastern Washington, the Whiteheads
11 no longer had immediate, physical possession of the boat or 2015 Chevy Truck. Furthermore,
12 they refused to pay for the same, and refused to explain what they had done with those items.
13 As subsequent events revealed, defendant Butch Whitehead and Gage Whitehead together
14 absconded with that truck, boat and trailer while “on vacation” and hid the same in Arizona
15 with the intention of defrauding their creditors, in particular plaintiffs Wren. The Whiteheads
16 returned that personal property to the state of Washington only after repeated orders to do so by
17 Pierce County Superior Court.

18 **2. Plaintiffs Discovered Widespread Fraud During their Subsequent**
19 **Investigation; Stanford and Sons Assigns its Causes of Action**

20 3.26 Following these events of mid-July 2019, plaintiffs Wren took possession of the
21 books, records and a computer server of PCAT. With the active assistance of Kenneth
22 Brautigan, plaintiffs began an investigation into what had caused Stanford and Sons to blow
23 through the \$1,700,000 borrowed from the Wrens, and to default on its loan repayments. At
24 the time of default, and thereafter, Kenneth Brautigan described to plaintiffs an extended series
25 of events that ultimately led to the foregoing defaults. As described in more detail below,
26 Stanford and Sons, LLC, has been used as a tool by defendant Butch Whitehead and the other

1 named nonparties described herein in a scheme to drain PCAT of its assets, including the \$1.7
2 million loan proceeds, both to the damage of plaintiffs Wren, Stanford and Sons, and
3 Stanford's personal guarantors, the Brautigans. As described below, defendant Butch
4 Whitehead and other named nonparties described herein engaged in a protracted series of
5 illegal activities, qualifying as an enterprise as defined by the Washington Criminal
6 Profiteering Act, RCW Chapter 9A.82, that converted, stole and laundered both the cash and
7 personal property of Stanford and Sons, to the ultimate damage of creditors/plaintiffs Wren, to
8 the limited liability company known as Stanford and Sons, and to the Brautigans. All of those
9 liabilities and debts are nondischargeable under 11 USC §523(a)(2)(A), (a)(4) embezzlement
10 and larceny, and (a)(6).

11 3.27 In light of the above, plaintiffs Wren requested and received from Stanford and
12 Sons, LLC, a conveyance of “[a]ll claims and causes of action Debtor has against third parties
13 in contract, tort, equity, or otherwise.” A true and accurate copy of that “First Amendment to
14 Bill of Conveyance in Lieu of Foreclosure, bates stamped KW 000001-2, is attached hereto as
15 Exhibit 8. As previously held in In re Mark E. Phillips, 2016 WL 7383964, pp.*2, 5 (US BAP
16 9th Cir. 2016), such an assignment of a business entity’s claims against its insiders is
17 enforceable through a nondischargeable judgment, in that particular instance under 11 USC
18 §523(a)(4) for criminal theft, i.e. embezzlement, under Washington law.

19 3.28 Plaintiffs Wren therefore have standing to assert both their direct causes of
20 action against defendants Whitehead, and as assignee of Stanford and Sons’ causes of action
21 against defendants Whitehead.

1 **3. Defendants Whitehead Engaged in a Widespread Conspiracy with Other,
2 Named Nonparties to Fraudulently Transfer the Assets of State Debtor
3 Stanford and Sons, to the Ultimate Damage of both its Creditors, Plaintiffs
4 Wren, as well as Stanford and Sons itself**

5 3.29 The members of the conspiracy to fraudulently transfer Stanford and Sons'
6 assets to defendant Butch Whitehead and his co-conspirators, and the specific parts those
7 named nonparties played in that conspiracy, are described below.

8 **(a) Members of the Auto Wholesale Enterprise**

9 3.30 As the evidence shows, once the \$1,200,000 in Wren loan funds were received
10 by PCAT, the members of the Auto Wholesale Enterprise promptly began dispersing the loan
11 proceeds to themselves without delivering reasonable equivalent value to Stanford and Sons for
12 the same.

13 3.31 Each of the following members of the Auto Wholesale Enterprise played a
14 different role in a wide-ranging scheme that drained Stanford and Sons of its assets, thereby
15 directly causing Stanford and Sons to breach its contractual obligations to repay the Wren
16 loans, resulting in the losses that give rise to this lawsuit.

17 **(i) Stanford and Sons, LLC, dba PCAT**

18 3.32 Based upon the representations of defendant Butch Whitehead and Kenneth
19 Brautigan, Stanford and Sons, LLC, was supposed to be the beneficiary of a business plan
20 whereby PCAT was purchasing used automobiles from private-party sellers and auctions,
21 primarily in British Columbia, Canada, using the funds provided by the Wrens' loans. Those
22 vehicles were then to be imported into the State of Washington and re-sold to retail buyers in
23 Pierce County, Washington, at PCAT's Puyallup facility. PCAT was to use the profits from
24 those imports to pay back its operating loans to the plaintiffs, to pay salaries, etc., and to
25 continue on with its business.

(ii) Non-Parties Kenneth and Jessica Brautigan.

3.33 Kenneth Brautigan is the sole owner of Stanford & Sons, LLC. This is confirmed by Stanford and Sons' filings with the State of Washington. ***See Exhibit 9.*** While Mr. Brautigan appears to have believed that he was taking those actions needed to execute the business plan described in the preceding paragraph, Mr. Brautigan in fact enabled an expansive theft by the members of the Auto Wholesale Enterprise of PCAT's assets. Mr. Brautigan's actions included either granting or allowing defendant Herbert "Butch" Whitehead III to exercise controlling authority over the employees and assets of Stanford and Sons, which authority defendant Herbert "Butch" Whitehead III abused through the theft, conversion and fraudulent transfer of the assets needed by PCAT to conduct its business and repay its loans to plaintiffs.

3.34 As previously stated, upon the failure of Stanford and Sons to fulfill its contractual obligations to the Wrens under the promissory notes, Kenneth and Jessica Brautigan acted to fulfill their personal obligations under a Continuing and Unconditional Guaranty by transferring to the Wrens what appeared likely to be all of the Brautigans' non-exempt assets in partial satisfaction of the default loans. The Brautigans' assets have yet to be fully liquidated, but their worth is estimated to be \$221,644.04, which is part of the previous estimated recoveries of \$500,000 to \$600,000.

3.35 Given these voluntary actions by the Brautigans, as of the filing of the Pierce County Action and this adversary complaint, the Wrens saw, and continue to see, no reason to name them personally as defendants in either action.

(iii) Defendant Herbert “Butch” Whitehead

3.36 Despite not being the owner of Stanford & Sons, LLC, defendant Butch Whitehead represented himself to plaintiffs and members of the public as being a “partner” or similarly-interested owner of Stanford and Sons, d/b/a PCAT. Even PCAT’s bookkeeper and internal accountant, Stephanie Townsend, testified during her Pierce County Superior Court

1 deposition that “the way that things were presented to me, that they were “partners” (using air
2 quotes), quote/unquote, and that they were running this business together.” (12/8/20 Stephanie
3 Townsend Dep., pp. 22:1-23:1, p. 54:1-6.

4 3.37 Plaintiffs Wren relied on Butch Whitehead’s representations to that effect and,
5 furthermore, observed him acting in the capacity of someone in control of PCAT. Examples of
6 these actions by Butch Whitehead include face-to-face meetings between plaintiffs and Butch
7 Whitehead, where PCAT’s financial performance was reviewed, as well as emails in which
8 Butch Whitehead discussed the business of PCAT with the Wrens in a manner in which an
9 owner would discuss the business. One example of such an email is email dated July 20, 2017
10 bates stamped KW 000280 - 282, and attached hereto as Exhibit 10. Other examples include
11 the pro forma statement prepared by him as part of the application for the original \$1,200,000
12 loan, and the various Balance Sheets and Income Statements prepared and distributed to the
13 Wrens during the course of the other loan application and refinancing.

14 3.38 In addition to these public representations of being a partner in Stanford and
15 Sons’ business, defendant Butch Whitehead assumed and exercised the authority of a person in
16 control of Stanford and Sons, LLC, making him an “insider” as defined in RCW
17 19.40.011(8)(b)(iii). Examples of defendant Butch Whitehead’s control of the affairs of PCAT
18 was his acquisition and use of signature authority over Stanford and Son’s Canadian bank
19 accounts, his use of that authority over Stanford and Son’s financial resources to transfer cash
20 to himself and other entities for which no reasonably equivalent value was provided, his
21 direction and control of the work of PCAT employees, and his trips to Canada to purchase used
22 cars with the proceeds of the Wrens’ loan for what was supposed to be inclusion in PCAT’s
23 retail inventory.

24 3.39 Another example of Herbert L “Butch” Whitehead’s assertion of ownership and
25 control over PCAT was his use of an April 10, 2017, Power of Attorney for Customs and
26 Export Forwarding Agent, and an accompanying “Corporate Certificate” by which he was

1 falsely represented to be the president and owner of a Washington corporation named Puyallup
2 Car and Truck, duly authorized to execute documentation on behalf of PCAT to appoint an
3 agent and attorney for purposes of importing merchandise into the United States of America.
4 (Exhibit 11, POA 000001 to 3.) While there are unanswered questions as to who actually
5 singed these forms as Herbert Whitehead, Butch Whitehead's use of those forms amount to a
6 knowing misrepresentation of his status at PCAT not only to individuals of the public, but also
7 to the United States of America.

8 3.40 Based on the facts laid out in this complaint, and as will be more fully proven at
9 trial, Herbert L. "Butch" Whitehead III intentionally organized, managed, directed, supervised,
10 or financed three or more persons with the intent to engage in a pattern of criminal profiteering
11 activity, as prohibited by the Washington Criminal Profiteering Act. RCW 9A.82.060. Those
12 actions, which at their heart represent an extensive pattern of theft of PCAT's assets, result in
13 nondischargeable debts pursuant to 11 USC §523(a)(2)(A), (a)(4) embezzlement and larceny,
14 and (a)(6). The persons so organized, managed, directed, supervised and financed included both
15 the other nonparties named herein, as well as employees of PCAT such as the bookkeeper
16 Stephanie Townsend who were unaware of the true intentions of defendant Herbert L.
17 Whitehead III and his co-conspirators.

(iv) David Gage Whitehead

19 3.41 David Gage Whitehead is the son of Herbert L. Whitehead III. David Gage
20 Whitehead is an “insider” of PCAT as defined in RCW 19.40.011(8)(b)(vi). Under the
21 direction of his father, David Gage Whitehead used both the financial resources and
22 organizational structure of PCAT to purchase and sell vehicles for his own personal benefit.
23 Ultimately, when Stanford and Sons defaulted on its loans to plaintiffs Wren, both he and his
24 father arrived at PCAT’s Puyallup facility on July 16, 2019 to assert ownership of a number of
25 vehicles. The Whiteheads left with six of those vehicles, and further, with the approval of
26 Henry “Murphy” Russell converted title for those vehicles and six others for purposes of

1 transferring the same into the name of J & N Investments. The Whiteheads' actions constituted
2 theft and interfered with Stanford and Sons ability to repay the Wrens' loans by reducing the
3 value of the collateral available for those repayments.

4 3.42 The Wrens' subsequent investigation establishes that both the six vehicles taken
5 by the Wrens, and the other six vehicles whose title documents were taken by the Whiteheads,
6 were purchased with PCAT money (originally borrowed from the Wrens) and purchased in
7 PCAT's name. The subsequent transfer of titles (as described more fully below) constituted
8 voidable transfers made without reasonably equivalent value received by PCAT, and further,
9 made with the actual intent to hinder, delay and defraud both their personal creditors, and the
10 creditors of PCAT.

11 3.43 Those same vehicles and title documents were subject to the Wrens' applicable,
12 perfected security agreements and liens, and were owned by the Wrens' following foreclosure
13 of those security interests. Therefore, David Gage Whitehead, in concert with his father
14 Herbert "Butch" Whitehead and Murphy Russell of J & N Investments, converted and stole at
15 least six vehicles that rightfully belonged to PCAT, plus the title documents for six more
16 vehicles rightfully belonging to PCAT.

17 3.44 In addition to the six vehicles taken on July 16, 2019, David "Gage" Whitehead
18 conspired and acted with his father Butch Whitehead to convert and steal other assets of PCAT,
19 including the 2012 Pontoon boat, its trailer, a 2015 Chevy Duramax truck, and a classic 1977
20 Ford F150.

21 3.45 The evidence also shows that David Gage Whitehead converted and stole cash
22 belonging to PCAT, frequently for the benefit of his father Butch Whitehead and mother
23 Jennifer Whitehead. For instance, on or about May 16, 2019, defendant Butch Whitehead
24 caused Stephanie Townsend to issue Check Number 6146 to David Whitehead in the amount of
25 \$15,646, which check was deposited in David Gage Whitehead's personal bank account and
26 then disbursed to and for the benefit of his parents by, first, paying \$5,611 to Nationstar

1 Mortgage for the Whiteheads' Lake Tapps first mortgage, and by writing his father a check for
2 \$10,000.00. Plaintiffs' investigation of Stanford and Sons' accounting records discloses no
3 debt owed to David Gage Whitehead for that sum. Instead, as opined by plaintiffs forensic
4 CPA Linda Saunders, this transaction constituted money laundering under RCW 9A.83.020.

(v) Defendant Jennifer L Whitehead

6 3.46 Jennifer L. Whitehead, a defendant in her marital capacity, is an “insider” of
7 PCAT as defined in RCW 19.40.011(8)(b)(vi), and an “insider” of her husband Butch
8 Whitehead under RCW 19.40.011(8)(a)(i). Jennifer L. Whitehead is accordingly liable under
9 that act for the receipt of fraudulent and/or voidable transfers by her marital community.

(vi) J & N Investments Inc.

11 3.47 J & N Investments Inc. is a Washington corporation. The public record
12 indicates that J & N is owned by Henry L. "Murphy" Russell II, along with his wife Victoria
13 Russell and son Jayson Russell. J & N does business under the trade name "Bulldog Auto
14 Sales & Service." J & N supposedly does and or did business in both Snohomish and Pierce
15 County, with the Pierce County location previously being that of Puyallup Car and Truck.

16 3.48 The evidence, described in more detail elsewhere in this complaint, establishes
17 that defendant Butch Whitehead caused to be transferred from the Wren loan proceeds, in the
18 period from March 2016 through May 2019, \$618,844.82 to and for the benefit of J & N
19 Investments, which money was used to pay for J & N's business expenses and other uses, for
20 which transfers no reasonably equivalent value was received by PCAT. On information and
21 belief, based upon the overall pattern of the co-conspirators' fraudulent conduct, those transfers
22 were done with the actual intent to hinder, delay and defraud both PCAT and its creditor,
23 plaintiffs Wren.

(vii) Henry L. "Murphy" Russell II

3.49 Henry L. "Murphy" Russell II is an insider of J & N Investments Inc. due to his ownership interest in that entity. RCW 19.40.011(8)(b)(vi). As such, he benefited from the fraudulent and/or voidable transfers from PCAT to J & N.

3.50 In addition to the transfers of PCAT assets received by J & N, PCAT's records show that Henry L. "Murphy" Russell II personally received transfers of \$25,000 per month from March 2016 through April 2017, with a \$10,000 payment being made early in the month, followed by a \$15,000 payment near the end of the month. In May 2017, Murphy Russell received that "typical" first \$10,000 payment, and then \$3,000 to pay a credit card bill, at which point payments to Russell appear to have stopped. At that point Henry L. "Murphy" Russell II had received \$363,000 for which he provided no reasonably equivalent value to PCAT. Based on the evidence discovered during the Pierce County Action, and based upon the overall pattern of co-conspirators' fraudulent conduct, those transfers were done with the actual intent to hinder, delay and defraud both PCAT and its creditor, plaintiffs Wren.

3.51 Based on the repeated, large receipt of PCAT assets both by J & N and by Murphy Russell personally, Murphy Russell must have known of the wrongful conduct of defendant Butch Whitehead, and further, must have knowingly and willingly participated in said scheme.

(viii) Victoria L. Russell

3.52 Victoria L. Russell, in her marital capacity, is an “insider” of J & N as defined in RCW 19.40.011(8)(b)(vi), and an “insider” of her husband as defined by RCW 19.40.011(8)(a)(i). She is accordingly liable under that act for the receipt of fraudulent and/or voidable transfers both by that entity, and due to her marital relationship with Murphy Russell.

(b) The Auto Wholesale Enterprise's Pattern of Criminal Profiteering Activity

3.53 As previously alleged, each of the defendants and named nonparty co-conspirators participated in and/or controlled the conduct of an enterprise that, to the extent legitimate, earned income by buying used automobiles, largely from private sellers and auctions in British Columbia, and then reselling them in Washington state, for the account of Stanford and Sons, LLC, d/b/a Puyallup Car and Truck. Again to the extent legitimate, the business plan was a common one—buy low, sell high, and make a profit off of the difference. That legitimate enterprise is hereinafter referred to as the “Auto Resale Enterprise.”

3.54 To the extent that the enterprise was not legitimate, each of the defendants and named nonparty coconspirators (with the exception of PCAT) profited from the conduct of the Auto Resale Enterprise by diverting and converting assets or cash for its, his or her personal use, when said assets or cash should have remained within the control of PCAT for the satisfaction of Stanford and Sons' loan debts to plaintiffs Wren, along with its other legitimate expenses and reasonable profit for its owner, Kenneth Brautigan and his marital community.

3.55 This illegitimate enterprise is hereinafter referred to as the Auto Wholesale Enterprise. The defendants and the named nonparty co-conspirators, again excepting PCAT, profited from the operation of the Auto Wholesale Enterprise as hereinafter described.

(i) Defendants Herbert and Jennifer Whitehead

3.56 The investigation by plaintiffs Wren has revealed that defendants Herbert and Jennifer Whitehead profited from Stanford and Sons, d/b/a PCAT, through a variety of transfers of assets for which reasonably equivalent value was not provided to PCAT, and in numerous instances through criminal conduct that falls within one of the defined acts of “criminal profiteering” set forth in RCW 9A.82.010(4).

3.57 One mechanism by which the Butch Whitehead accomplished this fraudulent purpose was through the manipulation of the procedures used to buy vehicles internationally

1 from private sellers in British Columbia, Canada. Stated as simply as reasonably possible, the
2 plaintiffs' investigation has revealed that defendant Butch Whitehead used false "corporate"
3 paperwork fraudulently misrepresenting his status as the owner and president of PCAT (Exhibit
4 11) as a part of his plan to control PCAT's business activities in British Columbia. He also
5 obtained control over PCAT's Canadian bank accounts, into which the proceeds of the Wren
6 loans were deposited for purposes of buying inventory for PCAT. Defendant Butch Whitehead
7 would then travel to British Columbia, contact a private seller of a used car, negotiate a
8 purchase price, and acquire the vehicle.

9 3.58 However, in that process he would falsify the price paid through a number of
10 different mechanisms. In some circumstances he would have a seller sign the sale
11 documentation without having completed the price paid (in Canadian dollars). Butch
12 Whitehead would then pay the seller the actual price agreed for the transaction, but inflate the
13 price on the documentation, keeping the difference for himself. In other cases, he indicated on
14 the purchase documentation that the price paid was in US dollars, as opposed to Canadian
15 dollars. Because of the significant exchange rate differential between these two currencies, that
16 currency fraud amounted to the theft of thousands of dollars (US) per transaction.

17 3.59 Plaintiffs Wren identified specific instances of fraud of the types described
18 above by hiring a private investigator in British Columbia, who has worked at locating the
19 sellers of vehicles to PCAT, and then interviewed them to determine the actual prices paid for
20 those vehicles. Those interviews have revealed a number of instances of fraud of the general
21 types described above, along with incidents where the sellers have determined that their
22 signatures were later forged on sale paperwork to falsely represent the price they were paid.
23 Those sellers have documented their testimony in affidavits.

24 3.60 A summary of these acts of fraud, consisting most fundamentally of the theft of
25 cash concealed through the preparation of fraudulently-prepared documents, is presented in the
26

1 table below, titled “Stolen Cash.” On information and belief, plaintiffs expect that additional
2 such incidents of cash fraud by defendants Whitehead occurred and will be found.

3 STOLEN CASH

Date	Stk #	Description	C\$ Price Charged to PCAT	C\$ Actually Paid	Stolen in C\$	Stolen in US \$	Seller Name
17/11/04	6863	2011 Ford F150	\$24,000	\$21,000	\$3,000	\$2,350	Tanya Learn
18/03/15	6936	2008 Ford F-350	\$25,000	\$22,500	\$2,500	\$1,930	Zelia Epp
18/04/02	6938	2006 Ford F-350	\$18,250	\$14,250	\$4,000	\$3,104	Vince/Lea Martorana
18/07/14	6969	2003 Dodge Dakota	\$6,100	\$4,300	\$1,800	\$1,368	Jakob Penner
18/08/19	6987	2009 Ford Ranger	13,762.57	\$8,500	\$5,263	\$4,029	Brianna Vogelaar
18/08/31	6990	2001 Chevy Silverado	\$18,000	\$15,000	\$3,000	\$2,309	Paul Topping
19/02/20	7107	2005 Ford Mustang	5,000	\$3,500	\$1,500	\$1,137	Carmen Prasad
19/04/06	7134	2009 Dodge Charger	\$21,451.53	\$16,000	\$5,452	\$4,071	Kel-X Direct Services
19/10/20	7124	2009 Jeep Wrangler	\$13,017	\$9,800	\$3,217	\$2,402	Dawn Stickler
19/10/22	7099	2006 Ford F-150	\$9,500	\$8,500	\$1,000	\$755	Jonathan Gray
				Totals:	\$30,732	\$23,455	

18 3.61 The 2009 Dodge Charger is an example of Butch Whitehead’s currency fraud.
19 To explain, the “Wholesale Order” that was typically prepared for British Columbia purchases
20 *atypically* states that the purchase amount paid by PCAT to the seller was for US \$16,020 (or
21 C\$21,451.53), when per the seller himself it was Canadian \$16,000. That fraudulent document
22 change disguised the theft of ~C\$ 5,451.53 on the day of sale, which was April 6, 2019.

23 3.62 The table above details ten separate felonies. Those felonies constitute Theft in
24 the Second Degree, a Class C felony under RCW 9A.56.040. Each of those ten acts of theft
25 also constitutes an act of criminal profiteering as defined by RCW 9A.82.010(4)(e) and are part
26

1 of a pattern of criminal profiteering as defined in RCW 9A.82.010(12). These willful,
2 intentional acts are nondischargeable under 11 USC §523(a)(2)(A), (a)(4) embezzlement or
3 larceny, and (a)(6).

4 3.63 In addition to stealing cash from the Canadian vehicle purchase transactions,
5 defendants Butch and Jennifer Whitehead have stolen cash and other items of personal
6 property, either for their personal benefit or for the benefit of their son David Gage Whitehead,
7 that were purchased using PCAT funds and titled in the name of PCAT, Stanford and Sons, or
8 the Wrens. Each of these items of personal property is worth a substantial sum. In addition, on
9 July 18, 2019, after the July 16, 2019 confrontation at PCAT's Puyallup site, defendant Butch
10 Whitehead transferred US cash to PCAT's Canadian account and then withdrew C\$1,450 in
11 Canadian currency. Those items presently known to plaintiffs to have been stolen by
12 defendants Butch and Jennifer Whitehead and their co-conspirators are as follows:

Vin #	Stock #	Description	ACV in US \$
1GC4K0E83FF5161609	7166	2015 Chev. Silverado 3500	\$36,584.53
2BGF09283SLY54302	6826	1977 Ford F150	\$20,542.55
59KBU2025H1000756	000756	2017 Summit Denali	\$5,199
PMY76478C212	6144	2012 Pontoon Boat	\$53,265.80
1L8TCS9MOCA007128	6144	2012 Boat Trailer	\$2,500
J9M93AH837784	N/A	1979 Jeep CJ7	\$12,500
5N1AA08C58N600152	N/A	2008 Nissan Armada	\$6,500
1HD1FRW192Y655378	N/A	2002 Harley Davidson	\$4,500
1HD1BYB175Y065664	N/A	2005 Harley Davidson	\$5,000
2BPSCG7C97V000093	N/A	2007 Skidoo	\$2,500

Vin #	Stock #	Description	ACV in US \$
1HD1FC4198Y682119	76526	2008 Harley Davidson	\$7,500
1J4GA39128L583815	92254	2008 Wrangler	\$17,500
1GKFK13097R141732	90099	2007 Yukon	\$9,500
July 18, 2019 C \$1,450 Cash withdrawal from PCAT's BC TD account	N/A	Stolen Cash	\$1,112.27
		Total:	\$184,704.15

3.64 The table above details fourteen separate felonies. Five of those felonies constitute Theft in the Second Degree, a Class C felony under RCW 9A.56.040. The other nine acts of theft, being for over US \$5,000, constitutes Theft in the First Degree, which is a Class B felony under RCW 9A.56.030. Each of those fourteen acts of theft also constitutes an act of criminal profiteering as defined by RCW 9A.82.010(4)(e). As such, the constituted nondischargeable debts under 11 USC §523(a)(4), embezzlement and larceny.

3.65 The above list includes the 2015 Chevy Silverado, the 2012 Pontoon Boat, and the boat's trailer, which defendant Butch Whitehead now claims are owned by his son David Gage Whitehead. However, at the time of the theft of those three items neither Herbert Butch Whitehead nor David Gage Whitehead had any colorable claim to title to the same, turning their seizure of those items into three separate acts of theft by each of them, acting in concert with the other, his co-conspirator.

3.66 In addition to the preceding acts of theft, and commencing in March 2016 immediately after PCAT received the initial \$1,200,000 loan from plaintiffs Wren, defendant Butch Whitehead caused PCAT to issue him payments in the amount of \$10,000 or \$12,500 each month through December 2018, and one additional payment for \$7,500 in January 2019, even though at no time did he become an employee, or cause to be withheld from his pay the federal income taxes required to be paid. Instead, exercising the control he had over Stanford and Sons and Stephanie Townsend, he caused those payments to be recorded as an "Other

1 Assets" account 1408, titled "Other Investments & Miscellaneous Assets." Again, because of
2 the centrality of the nature of this fraud, plaintiffs emphasize that defendant Butch Whitehead
3 caused this expense to Stanford and Sons to appear as an asset on the Company's Balance
4 Sheet. Thus, when defendant Butch Whitehead caused the June 30, 2016 Balance Sheet for
5 Puyallup Car and Truck (at Audit – 000061) to be printed (on July 19, 2016) and delivered to
6 plaintiffs Wren for their information on how Stanford and Sons was doing, Stanford and Sons'
7 Balance Sheet falsely reflected an asset of \$64,000, which was really an expense, which
8 expense did not appear on the Company's Income Statement. (Audit – 000063.) Thus,
9 operating in exactly the opposite manner on that Income Statement, the \$64,000 in expenses
10 incurred through June 30, 2016 for the payments to Butch Whitehead did not appear on that
11 financial statement, falsely and materially inflating the Company's income (for the
12 consumption of the Wrens) in the same amount.

13 3.67 Naturally, again by exercising his control over Stanford and Sons, Butch
14 Whitehead prevented the company from issuing to the IRS the Form 1099s that should have
15 reflected those payments to him. Those Form 1099s would have alerted the IRS to that income
16 and resulted in the Whitehead marital community being taxed upon the same. Plaintiffs allege,
17 based on all the evidence obtained, that this course of conduct was knowing, intentional, and
18 willful, with the expectation that multiple parties would be injured thereby, including plaintiffs
19 Wren and the US Government.

20 3.68 Through the above machinations, defendant Butch Whitehead extracted
21 \$410,000 from PCAT from March 15, 2016, through January 16, 2019. During that same time
22 period, defendant Butch Whitehead's control over the accounting records of Stanford and Sons
23 resulted in the production and distribution of Balance Sheets that falsely represented the
24 existence of an "Other Investments & Miscellaneous Assets" in the same amount of \$410,000,
25 while the expenses of the company on its Income Statements were underreported in the same
26 amount. Given the wide-ranging nature of the fraud committed by Butch Whitehead on PCAT,

1 his lack of any ownership interest in the same, and his lack of any formal employment
2 relationship, these payments were not within the range of values that any employer similarly
3 situated to PCAT would have paid to purchase Herbert Whitehead's services. As such, Herbert
4 Whitehead did not provide reasonably equivalent value for the same. Furthermore, given his
5 personal involvement and direction of the scheme that drained PCAT of its funds, those
6 transfers were done with the actual intent to hinder, delay or defraud plaintiffs Wren, by
7 making it impossible for PCAT to repay its loans. Defendant Butch Whitehead's conduct
8 constituted theft, and the corresponding debts should be found nondischargeable under 11 USC
9 523(a)(2)(A), (a)(4) and (a)(6).

10 3.69 Furthermore, those series of transfers totaling \$410,000 over less than three
11 years would have lead any person in defendant Herbert Whitehead's position to reasonably
12 believe that Stanford and Sons, d/b/a PCAT would be unable to make its loan payments to
13 plaintiffs Wren as they became due.

14 3.70 One measure of what a reasonable amount of compensation could have been for
15 Butch Whitehead's services was the compensation scheme he proposed in an email dated
16 February 5, 2019, after the defendants and their named nonparty co-conspirators had drained
17 Stanford and Sons of most of its assets, thereby making it impossible to continue the large
18 monthly transfers that had been the routine. Briefly, and in general, Whitehead proposed
19 paying himself a \$500 commission on all cars he purchased for Puyallup Car and Truck in
20 Canada. Using that measure, Whitehead was paid \$26,750 in commissions in the five month
21 period covering February through June 2019, for an average of \$5,350 per month. Applied to
22 the thirty-five month period from March 2016 through January 2019, Butch Whitehead would
23 have been paid \$187,250, resulting in overcompensation of \$222,750.00.

24 3.71 However, by inducing Kenneth Brautigan to permit Herbert Whitehead to
25 exercise authority over Stanford and Sons' assets and employees ordinarily reserved for an
26

owner, defendant Herbert "Butch" Whitehead created and assumed to Stanford and Sons, LLC, d/b/a PCAT, a wide variety of fiduciary duties, including but not limited to:

- a. The duty to deal with PCAT and its actual owner with candor and the utmost good faith;
- b. The duty of loyalty and care to both the business entity and to the actual member;
- c. The duty of loyalty to avoid secret profits, self-dealing, and conflicts of interest;
- d. The duty to avoid self-dealing by refraining from dealing with the business entity on behalf of a party having an interest adverse to the business entity;
- e. The duty to avoid conflicts of interest in refraining from competing with the business entity; and
- f. The duty of care to refrain from engaging in grossly negligent conduct, intentional misconduct, and knowing violations of law.

Defendant Herbert “Butch” Whitehead breached all of those fiduciary duties and, by so doing, forfeited under Washington law his right to retain any of the \$410,000 he received from PCAT between March 2016 and January 2019, along with any of the buyer commissions (totaling \$26,750) received in the period from February 2019 through June 2019. Furthermore, this series of egregious activities establish that defendant Butch Whitehead committed “actual fraud,” within the meaning of 11 USC §523(a)(2)(A), with respect to the loans obtained from plaintiffs Wren due to defendant Whiteheads’ materially false representations regarding the financial condition of Stanford and Sons.

(ii) Herbert Whitehead, David Whitehead and J & N Investments

3.72 David Gage Whitehead, J&N Investments, Murphy Russell and defendant Herbert L. Whitehead III, acting in concert, converted either the title documentation, or both the title documentation and the vehicle itself, of twelve different vehicles that Stanford and

1 Sons' records show were purchased in British Columbia by PCAT using PCAT funds. Those
2 conversions, happening on and after July 16, 2019, are listed in the table below:

Stock #	Vin #	Description	Est Value in US \$	Physical Possession
7126	1J4GA39129L745153	2009 Jeep Wrangler	\$13,400	Whitehead
7131	1GTHK23224F194426	2004 GMC Sierra 2500	\$14,400	Whitehead
7156	1D7RV1CT1BS644298	2011 Dodge Ram 1500	\$14,100	Whitehead
7175	1J4FA24137L225697	2007 Jeep Wrangler	\$9,600	Whitehead
7179	1FDXE45P75HB28253	2005 Ford E-450	\$9,500	Whitehead
7182	1FTKR4EE2BPA56039	2011 Ford Ranger	\$5,300	Whitehead
7183	1GCHK23205F841987	2005 Chevy Silverado 2500	\$16,600	Wren
7187	5UXFE4C54AL381196	2010 BMW XS	\$8,000	Wren
7196	1FTFX1EFXDFA96344	2013 Ford F-150	\$12,000	Wren
7197	1C4BJWEG4EL213263	2014 Jeep Wrangler	\$21,000	Wren
7198	1FTEW1E87AFB19834	2010 Ford F-150	\$12,600	Wren
7068	3C6TD5DT9CG231568	2012 Dodge Ram 2500	\$13,000	Wren
		Total:	\$149,500	

14 3.73 David Gage Whitehead, J&N Investments, Murphy Russell and defendant
15 Herbert L. Whitehead III, conspired and executed their theft of these vehicles and titles through
16 a complex scheme. First, on July 16, 2019, when plaintiffs Wren were attempting to gather the
17 collateral available as security for the partial repayment of the unpaid loan balances, Gage and
18 Butch Whitehead asserted that Gage, a young man in his early 20s, had purchased the above-
19 referenced vehicles using money from PCAT's bank accounts, using PCAT's name, and using
20 PCAT's import/export clearances, without offering any legitimate explanation for why Gage
21 Whitehead would be exploiting PCAT's company structure and financial resources in such a
22 manner.

23 3.74 Next, having convinced the Puyallup police who were on the scene that the
24 dispute was a civil matter, the Whiteheads convinced the Wrens to allow them to take six
25 vehicles off the lot, subject to their later proving their contentions to be true. The Wrens'
26 subsequent investigation establishes that both the six vehicles taken by the Wrens, and the other

1 six vehicles whose title documents were taken by the Whiteheads, were purchased with PCAT
2 money (originally borrowed from the Wrens) and purchased in PCAT's name, and that the
3 Whiteheads could not establish any rightful title to said personal property, let alone the superior
4 title that would be needed to overcome the Wrens' rights as secured creditors.

5 3.75 In the meantime, defendant Butch Whitehead exploited his position of control
6 over PCAT to continue with the fraudulent schemes of the Auto Wholesale Enterprise.
7 Specifically, because the vehicles at issue were purchased in British Columbia, because Butch
8 Whitehead was the individual who purchased those vehicles on behalf of PCAT using PCAT
9 money, Butch Whitehead had physical possession of the original purchase documentation.
10 Defendant Butch Whitehead used his possession of the original documentation to intentionally
11 modify the same to falsely represent that J & N Investments, Inc., had purchased those
12 vehicles, and further, to induce the Washington Department of Licensing to transfer legal title
13 to eleven of twelve of those vehicles into the name of J & N Investments.

14 3.76 The aforementioned transfers of title documentation for eleven of the twelve
15 vehicles constituted voidable transfers to J & N Investments, made without reasonably
16 equivalent value to PCAT. Those transfers to J & N Investments were, furthermore, made with
17 the actual intent to hinder, delay and defraud both their personal creditors, and the creditors of
18 PCAT, specifically, plaintiffs Wren.

19 3.77 Each of the aforementioned twelve transfers of title, and six transfers of physical
20 possession constitute theft of property worth in excess of \$5,000 each. Thus, these events
21 constitute twelve additional acts of criminal profiteering as defined by RCW 9A.82.010(4)(e)
22 and are nondischargeable under 11 USC §523(a)(2)(A), (a)(4) embezzlement or larceny, and
23 (a)(6).

(iii) Murphy and Victoria Russell

3.78 Henry L. "Murphy" Russell II is an insider of J & N Investments Inc. due to his ownership interest in that entity. RCW 19.40.011(8)(b)(vi). He was not an owner of PCAT,

1 nor an employee. As an insider of J & N, with no legitimate claim on the assets of PCAT, he
2 benefited from the fraudulent and/or voidable transfers from PCAT to or for the benefit of J &
3 N, which are described here and in the following subsection (iv).

4 3.79 As an example of the fraudulent transfers directed by defendant Butch
5 Whitehead and the Auto Wholesale Enterprise, over a period of 14 months PCAT paid \$25,000
6 per month to Henry L. “Murphy” Russell II, in two payments each month, one for \$10,000 and
7 one for \$15,000. The initial payment of \$10,000 was made on March 3, 2016, the very first
8 day after the promissory note for \$1,200,000 was signed by Stanford and Sons, LLC, and
9 guaranteed by the Brautigans.

10 3.80 These payments of \$25,000 were made at the direction of defendant Butch
11 Whitehead and made out of a payroll account to a payee named “Investment Inc., J&N”, with
12 the odd ordering of the words of the payee reflecting the “last name, first name” format of the
13 payroll records in general. When PCAT accounting staff questioned Butch Whitehead
14 regarding the company purpose of those payments, defendant Whitehead responded to the
15 effect that PCAT was paying Murphy Russell for “training.” However, the entries on the
16 General Ledger print out of those payments (bates stamped KW 000231-1, and attached hereto
17 as Exhibit 12) generally refer to each bi-monthly payment as a “draw” for the first or second
18 half of the month, as applicable. Murphy Russell was, however, neither an owner nor
19 employee of PCAT, and thus he had no right to receive “draws” of any sort from Stanford and
20 Sons. Furthermore, as another indicator of co-conspirators’ fraudulent intent, no IRS forms
21 1099 or W-2 were issued to Murphy Russell or J&N Investments.

22 3.81 As is seen from Exhibit 12, these payments for the personal benefit of Murphy
23 Russell continued at the rate of \$25,000 per month through April 2017. Then, in May 2017,
24 one additional payment of \$10,000 was made on the fifth of the month, again noted as a “draw”
25 per the typical “Description” entries, and then one final payment in this GL account for \$3,000,
26 on May 12, 2017, for \$3,000, described as “Cabela’s CC Reimbursement—Per Butch.” The

1 grand total of these transfers for the direct benefit of Murphy Russell and his marital
2 community was \$363,000 in a period covering less than fifteen months.

3 3.82 There is no evidence of any legitimate “training” services being provided by
4 Murphy Russell to any owner or employee of PCAT. Further, \$25,000 per month for 14-plus
5 months is not within the range of values that any business, similarly situated to PCAT in the
6 used car business, would pay for any training services in an arm’s length transaction at market
7 rates.

8 3.83 In sum, Murphy Russell, individually, along with the marital community of
9 Murphy and Victoria Russell did not provide reasonably equivalent value for the payments
10 received from PCAT. Furthermore, the fact that defendant Butch Whitehead directed that these
11 absurd payments be made to Murphy Russell demonstrates the co-conspirators’ actual intent to
12 hinder, delay and defraud both PCAT and ultimately PCAT’s creditor, plaintiffs Wren.

13 3.84 Compounding the fraudulent nature of these transactions, defendant Butch
14 Whitehead caused these payments to Murphy Russell to be recorded on Stanford and Sons’
15 Balance Sheet as a Receivable under Account 110501, “Payroll Advance Receivable,” rather
16 than as an expense on the Income Statement. In other words, just like the fraudulently
17 concealed payments to Butch Whitehead, the payments to Murphy Russell were concealed as a
18 loan appearing as an asset on Stanford and Sons’ Balance Sheet, and not as an expense within
19 Stanford and Sons’ Income Statement. So, referring back to PCAT’s June 30, 2016 Balance
20 Sheet, the total of the intentionally-misrepresented Account 110501, “Payroll Advance
21 Receivable” for Murphy Russell plus intentionally-misrepresented Account 1408, “Other
22 Investments & Miscellaneous Assets” for Butch Whitehead exceeds the total reported “Net
23 Income” of \$94,628.58.

24 3.85 Put differently, defendant Butch Whitehead was falsely representing to plaintiffs
25 Wren that Stanford and Sons was profitable when, in reality, it was losing money.
26

1 3.86 Based on his repeated, large receipt of PCAT assets, Murphy Russell must have
2 knowingly joined in the criminal conduct of Butch Whitehead, and further, must have
3 knowingly and willingly participated in said scheme with the intent or expectation that PCAT
4 would incur debts beyond its ability to pay as they became due. Accordingly, this stream of
5 payments to Russell contains 30 separate acts of criminal profiteering, as defined by RCW
6 9A.82.010(4)(e), totaling \$363,000.00. Defendant Butch Whitehead is jointly and severally
7 liable for this debt, which debt is nondischargeable under 11 USC §523(a)(2)(A), (a)(4)
8 embezzlement or larceny, and (a)(6).

(iv) Duward William Frame, IV and the Theft of a 2011 Ford

10 3.87 Duward William Frame, IV is the boyfriend of defendant Whitehead’s daughter.
11 Frame took physical possession of a 2011 Ford Taurus, VIN No. 1FAHP2DW6BG111662,
12 which vehicle was legally owned by Puyallup Car and Truck, by completing a “Dealer’s Permit
13 for Demonstration” on July 12, 2019. After its default on the Wren loans and the initial July
14 16, 2019 confrontations with defendant Butch Whitehead and Gage Whitehead, Stanford and
15 Sons demanded that Frame return the 2011 Ford Taurus. (Exhibit 13, KW 000384 – 387-1.)
16 Frame refused, claiming that he no longer had possession of the same. While Frame initially
17 refused to say who he supposedly gave that vehicle to, subsequent discovery, and defendant
18 Butch Whitehead’s own admissions, established that Whitehead was the individual who took
19 possession of that vehicle without permission of Stanford and Sons.

20 3.88 PCAT paid \$9,100 at auction for that Ford Taurus, which sum was paid via a
21 secured flooring loan from an entity known as NextGear. Because neither Brautigan nor
22 Stanford and Sons had the funds to pay NextGear, plaintiffs Wren ultimately were required to
23 pay the debt to NextGear.

24 3.89 After the Pierce County Action was commenced, defendant Butch Whitehead
25 returned the 2011 Ford Taurus to plaintiffs Wren. Notwithstanding that return, following a
26 summary judgment hearing on September 17, 2021, the Pierce County Superior Court held that

1 Frame had converted that 2011 Ford Taurus, and that defendant Butch Whitehead had
2 committed two predicate acts under RCW 9A.82.100, specifically RCW 9A.82.010(4)(e) and
3 RCW 9A.82.010(4)(pp). Defendant Whitehead's liability for these actions is nondischargeable,
4 not only under 11 USC §523(a)(4) for his larceny and/or embezzlement, but also under 11 USC
5 §523(a)(2)(A) and (a)(6) due to the willfulness, and actual fraud, of his conduct. The actual
6 amount of those damages will be determined at trial but are here alleged to be the original
7 purchase price of the vehicle, i.e., \$9,100.

(v) J & N Investments Inc.

9 3.90 During the same time period that Murphy and Victoria Russell received
10 \$363,000 in fraudulent transfers from PCAT, J & N Investments also received fraudulent
11 transfers of PCAT assets equaling at least \$618,844.82.

12 3.91 As set forth in the table below, defendant Butch Whitehead, exercising his
13 position of control over PCAT, caused that company to make payments to or for the benefit of J
14 & N and the entire Auto Wholesale Enterprise. Those fraudulent transfers of assets included
15 direct payments from PCAT to the creditors of J & N, as well as payments to J & N
16 “reimbursing” that company for that company’s payment of its own expenses. Based on the
17 various descriptions of these payments, the defendants and the named nonparty co-conspirators
18 caused PCAT to pay for virtually every type of expense that J & N incurred during its
19 operations.

Amounts Paid to or for the Benefit of J & N Investments, LLC

Date	Ck #	Paid To	Description	Amount
03/18/16	10036	J&N	Payroll Reimbursement	\$4,414.85
04/12/16	10196	J&N	Payables Reimbursement	\$11,643.54
06/14/16	10671	J&N	Partial June 2016 Service Reimbursement	\$10,000.00
06/14/16	10679	J&N	June 2016 Remaining Balance Service Reimbursement	\$2,081.97
07/15/16	10953	J&N	Partial July Reimbursements	\$10,000.00
07/26/16	11070	J&N	Invoice #2016-0619 less Stock No. 110	\$2,569.65
09/26/16	11535	J&N	Lot Check Expense	\$95.00

	Date	Ck #	Paid To	Description	Amount
1	10/10/16	11626	J&N	Lot Check Expense	\$95.00
2	11/21/16	11906	J&N	Auction Lot Check Expense	\$95.00
3	11/28/16	11930	J&N	Lot Check Expense	\$95.00
4	02/14/17	12421	J&N	Credit Card Payments	\$5,000.00
5	02/14/17	12422	J&N	Auction Lot Check Fee	\$95.00
6	03/02/17	12533	J&N	Credit Card Payment less Rent Overpayment	\$1,005.90
7	03/07/17	12559	J&N	Serv Exp – CC Reimbursement	\$1,962.56
8	03/21/17	12669	J&N	Cabela's Card Payment	\$5,000.00
9	04/03/17	12722	J&N	February 2017 B&O Tax	\$1,754.92
10	04/18/17	12786	J&N	Cabela's CC Reimbursement – Serv Dept.	\$8,000.00
11	04/24/17	12826	J&N	March 2017 B&O Tax	\$1,300.74
12	05/25/17	12985	J&N	April 2017 Tax Reimbursement	\$375.00
13	04/01/16	10121	Long Dog LLC	April Rent – Serv Dept.	\$5,891.90
14	03/16 – 05/17		Bulldog Auto Sales	Rent, Payroll Reimbursement, Serv Dept., NNNs	\$106,957.41
15	05/16 – 02/17		Bulldog Auto Sales	Reimbursements, Office Expenses, Rent, NNNs	\$220,079.29
16	06/16 – 04/17		Universal Premium	Fuel Payment, Payment on Account	\$24,260.92
17	06/16 – 02/17		Capital Premium	Insurance Premiums	\$17,519.21
18	05/16 – 01/17		Progressive	Insurance Premiums	\$9,074.12
19	03/16 – 04/17		Frontier Comm.	On Account	\$2,038.15
20	05/16 – 04/17		City of Marysville	Dumpster billing, on account	\$4,915.34
21	03/17 – 05/17		Angela Fitts	Office/Accounting Services	\$4,369.00
22	04/17 – 05/17		Sound Accounting	On Account	\$773.44
23	2016		Various employees	Summary of Payroll Paid to Employees of J&N	\$90,979.50
24	2017		Various employees	Summary of Payroll Paid to Employees of J&N	\$51,354.82
25	06/22/16		MTC	Geotech Engineering & Consulting	\$1,760.00
26	03/16/17		Sprint		\$336.61
27	05/19/16		Franks Field Service	Truck Repair	\$5,407.71
28	08/24/16		Bank of America	On Account	\$295.75

Date	Ck #	Paid To	Description	Amount
08/29/16		Cabela's Visa	On Account	\$4,554.15
08/11/16		Banner Bank	On Account	\$45.00
08/11/16		First Bankcard	On Account	\$1,151.54
08/24/16		Card Services	On Account	\$1,060.44
08/11/16		Best Buy Credit Svs	On Account	\$436.39
				\$618,844.82

3.92 As seen from the table above, PCAT paid J & N's expenses for J & N's own employees, for the cost to rent J & N's business premises, for general office expenses, for fuel for J & N's vehicles, for the maintenance costs for J & N's vehicles, for the cost of inventory audits by J & N's own floor financier, for J & N's Business and Occupation taxes, for other miscellaneous tax expenses, business auto and general liability insurance expenses, telephone and internet charges, and even the utility charges owed by J & N to the City of Marysville.

3.93 In short, defendant Butch Whitehead, with the active participation of the other named nonparty co-conspirators, most notably here Russell and J & N itself, made PCAT pay at least \$618,844.82 to cover a vast array of J & N's business expenses of J & N in the period from March 2016 through May 2017, for which expenses Stanford and Sons had no liability. By doing so, the defendants and named nonparty co-conspirators violated RCW 9A.82.080, prohibiting the use of proceeds of criminal profiteering to control an enterprise, namely the "J & N Investments Enterprise."

3.94 In addition to violating Washington's Criminal Profiteering Acts, the foregoing transfers constituted transfers made without reasonably equivalent value because nothing of value was provided in exchange for PCAT's payment of J & N's obligations to both private and public entities. Furthermore, the circumstances of these innumerable transfers leads to the unavoidable conclusion that they were made with the actual intent to hinder, delay or defraud

1 both the Wrens and Stanford and Sons, LLC, and thus are nondischargeable under 11 USC
2 523(a)(2)(A), (a)(4) and (a)(6).

3 **C. Overall Single Damages from Fraudulent Conveyances/Criminal Profiteering to**
4 **Stanford and Sons, LLC and its Creditors Kenneth and Alice Wren**

5 3.95 As previously alleged, state debtor Stanford and Sons has assigned its causes of
6 action against defendants Whitehead as a part of Stanford and Son's efforts to satisfy its
7 contractual obligations to plaintiffs Kenneth and Alice Wren. In re Mark E. Phillips, 2016 WL
8 7383964, *2 (US BAP 9th Cir. 2016).

9 3.96 The single damages caused to Stanford and Sons, LLC and plaintiffs Wren are
10 summarized below and estimated to equal \$1,785,353.97:

Description	Amount
Stolen Cash from Canadian Car Sales (Complaint ¶3.60)	\$23,455.00
Stolen Vehicles, Boat, Trailer and Cash (Complaint ¶3.63)	\$184,704.15
Fraudulent Transfers to Butch Whitehead (Complaint ¶¶3.68-3.71)	\$436,750.00
Conversion of title documents for 12 vehicles, plus 6 of the vehicles themselves (Complaint ¶3.72)	\$149,500.00
Fraudulent Transfers to Murphy Russell (Complaint ¶¶3.50, 3.81, 3.86, 3.90)	\$363,000.00
Conversion of 2011 Ford Taurus (Complaint ¶¶3.88-.89)	\$9,100.00
Fraudulent Transfers to J & N Investments (Complaint ¶¶3.48, 3.90-93)	\$618,844.82
Total:	\$1,785,353.97

18 3.97 The fact that the total of these estimated damages is roughly equivalent to the
19 \$1,700,000 in loans provided by plaintiffs Wren to Stanford and Sons is not purely
20 coincidental, as the fundamental aim of the Auto Wholesale Enterprise and J & N Investments
21 Enterprise was to drain Stanford and Sons of its assets, to the benefit of the co-conspirators.

22 3.98 Through those wrongful actions, the defendants and named nonparty co-
23 conspirators rendered Stanford and Sons incapable of paying its debts when they became due,
24 which most importantly here included the \$1,200,000 and the \$500,000 loans. At the time of
25 that default, the unpaid balance of those loans was \$1,187,872.89, plus interest, fees, expenses
26

1 and costs. That liability was confirmed by the Pierce County Superior Court's Order on
2 Summary Judgment filed October 4, 2021.

3 3.99 Accordingly, plaintiffs Wren, Stanford and Sons, LLC, and the Brautigans were
4 all victims of the Auto Wholesale Enterprise. Plaintiffs Wren are entitled to recovery a
5 nondischargeable judgment under 11 USC 523(a)(2)(A), (a)(4) and (a)(6) in an amount to be
6 proven at trial but here alleged to be at least \$1,785,353.97.

7 IV. CAUSES OF ACTION

8 A. **Cause of Action No. 1: Liability Under 11 USC §523(a)(2)(A) and (a)(6) for** 9 **Fraudulently Inducing Plaintiffs Wren to Make \$1,700,000 in Loans to Stanford** **and Sons**

10 Plaintiffs Wren, both personally and as assignees of Stanford and Sons, reallege
11 paragraphs 1.1 through 3.99 as if restated herein in full.

12 4.1 The term “actual fraud,” as used in the discharge exception in §523(a)(2)(A) for
13 debts obtained by false pretenses, a false representation, or actual fraud, encompasses forms of
14 fraud, like fraudulent conveyance schemes, that can be effected without a false representation.
15 Husky Intern. Electronics, Inc. v. Ritz, 578 U.S. 356, 359 (2016).

16 4.2 Debtors who make false representations under the discharge exception for debts
17 obtained by false pretenses, a false representation, or actual fraud can also inflict “willful and
18 malicious injury,” whether or not that injury is a result of fraud. 11 U.S.C.A. § 523(a)(6). Husky
19 Intern., 578 U.S. at p. 363. An act is “willful and malicious” when done intentionally and the act
20 necessarily produces harm and is without just cause or excuse. The act may be “willful and
21 malicious” even absent proof of specific intent to injure. In re Saylor, 108 F.3rd 219, 220-221
22 (9th Cir., 1997). Put differently, even if defendant Whitehead argues that he intended to have
23 Stanford and Sons pay back the Wrens’ loans, his intentional acts of misrepresentation and
24 omission were without just cause or excuse and resulted in the Wrens’ injuries, making the debt
25 nondischargeable under 11 U.S.C.A. § 523(a)(6).

26 4.3 Even though false representations or omissions to a creditor are not required for

1 entry of a nondischargeable judgment under either §523(a)(2)(A) or 11 U.S.C.A. § 523(a)(6), the
2 conduct of defendant Herbert L. Whitehead III fulfilled each of the nine elements of fraud under
3 Washington law, to wit, (1) a representation of an existing fact; (2) the fact is material; (3) the
4 fact is false; (4) the defendant knew the fact was false or was ignorant of its truth; (5) the
5 defendant intended the plaintiff to act on the fact; (6) the plaintiff did not know the fact was false;
6 (7) the plaintiff relied on the truth of the fact; (8) the plaintiff had a right to rely on it; and (9) the
7 plaintiff had damages. Indeed, all of these elements are fulfilled (a) for the original March 2016
8 loan of \$1,200,000, (b) the second February 2017 loan of \$500,000, and (c), the January 2018
9 refinancing of the initial \$1,200,000 loan.

10 4.4 For instance, defendant Whitehead prepared and presented the Pro Forma
11 package, relevant portions of which are attached hereto as Exhibit 14. That Pro Forma package
12 significantly overstated income from the beginning and understated the liabilities that Stanford
13 and Sons had as of January 15, 2016. As an example, the financial statements contained within
14 the Pro Forma package failed to disclose that as of January 15, 2016, Stanford and Sons owed
15 Robert (Bob) Graham \$375,000 on a promissory note that was not disclosed. Those financial
16 statements further failed to disclose that Stanford and Sons was paying Robert Graham interest-
17 only monthly payments of \$3,125.

18 4.5 Defendant Butch Whitehead knew about these liabilities to Robert Graham at
19 the time he prepared and presented the Pro Forma package to plaintiff Kenneth Wren. Indeed,
20 Robert Graham appears as one of Whitehead's personal creditors in this bankruptcy. The
21 failure to disclose these liabilities was material because, for instance, he failed to reveal
22 Stanford and Sons' true debt load. It was also material to the actual performance of Stanford
23 and Sons because, for instance, the unrecorded interest-only payments made in 2016 wiped out
24 the "Actual Net Profit" of \$36,000 that the company supposedly made, as was ultimately
25 reported in 2018 by CPA Norm Smith on the Brautigan's 2016 tax return.

1 4.6. The Stanford and Sons Pro Forma plans, as proposed to Kenny Wren, were to
2 take on a retail segment of business. These plans were overshadowed by defendant Butch
3 Whitehead's undisclosed plan to also include colleague Henry L. (Murphy) Russell II and his
4 company J&N Investments, Inc., as a recipient of the "expected future profits" from this
5 expansion. From March 1, 2016, defendant Butch Whitehead had convinced Ken Brautigan
6 that he and Brautigan could each take \$10,000 to \$12,500 a month "profit draws," and they
7 could team up with J&N to make this expansion a "joint venture" with Murphy Russell, who
8 would receive \$25,000 a month in such future profit draws.

9 4.7 Given that these "future profit draws" of ~\$50,000 a month started immediately
10 upon receipt of the Wrens' \$1,200,000 loan, defendant Butch Whitehead clearly acted
11 intentionally when he failed to disclose the same to the Wrens. And predictably, these
12 unearned profit payments had a dramatic impact on the profitability of Stanford and Sons,
13 which had projected profits of \$521,520 for 2016. (Exhibit 14, p. 4.) Instead, as indicated,
14 CPA Norm Smith ultimately calculated that Stanford and Sons had earned an actual net profit
15 of \$36,000, but even that figure failed to take into account the undisclosed annual interest
16 payments of \$37,500 per year made to Robert Graham.

17 4.8 All of the foregoing establishes that defendant Butch Whitehead, in support of
18 the application for the March 2016 \$1,200,000 Wren loan (1) made representations of existing
19 facts; (2) that the facts were material to the predictable performance of Stanford and Sons; (3)
20 that the facts were false; (4) that defendant Butch Whitehead knew the facts were false; (5) that
21 defendant Butch Whitehead intended plaintiffs Wren to act on those facts because he both
22 prepared and decided what would and would not be presented to the Wrens for their
23 consideration; (6) plaintiffs Wren did not know these facts were false; (7) the plaintiffs relied
24 on the truth of the facts as represented; (8) plaintiffs Wren had the right to rely on those facts,
25 and in fact were both justified in doing so and did so reasonably; and (9) the Wrens were

1 damaged because defendant Butch Whitehead's conduct induced the Wrens to make loans that
2 would not have been made and caused Stanford and Sons to be unable to repay the loan.

3 4.9 As previously alleged, with respect to the February 2017 loan of \$500,000,
4 defendant Butch Whitehead controlled the financial operations of Stanford and Sons and
5 caused the payments made to him, and to Murphy Russell, to be recorded on the Balance Sheet
6 of Stanford and Sons as assets when they were in fact expenses that should have been recorded
7 on the company's Income Statement. A copy of the Balance Sheet and Income Statement for
8 November 2016, printed in December 2016 and provided to plaintiffs Wren prior to the
9 February 2017 loan for \$500,000 is attached hereto as Exhibit 15. If defendant Butch
10 Whitehead had fully and honestly disclosed the payments made to himself, to Murphy Russell
11 and to Robert Graham, the \$201,515.01 in "Net Income" falsely reported on those statements
12 would have been wiped out and replaced with a significant loss.

13 4.10 Yet, Butch Whitehead intentionally did the opposite for the purpose of
14 misleading the Wrens, who were in fact misled in their both justifiable and reasonable reliance
15 on Butch Whitehead's representations and omissions, who made the same as a controlling
16 insider of Stanford and Sons, and for the purpose of inducing the Wrens not only to loan an
17 additional \$500,000, but to continue the overall lender/debtor relationship.

18 4.11 This pattern of intentional deception continued with the refinancing of the
19 original \$1,200,000 loan, as is shown by the materially-false financial statements attached
20 hereto as Exhibit 16 for year-end 2016, and for the first six months of 2017, as printed and then
21 delivered by Butch Whitehead to the Wrens on August 1, 2017. Again, all of these fraudulent
22 misrepresentations and omissions by defendant Butch Whitehead were (1) representations of
23 existing facts; (2) the facts were material to the predictable performance of Stanford and Sons;
24 (3) the facts were false; (4) defendant Butch Whitehead knew the facts were false; (5)
25 defendant Butch Whitehead intended plaintiffs Wren to act on those facts because he both
26 prepared and decided what would and would not be presented to the Wrens for their

1 consideration; (6) plaintiffs Wren did not know these facts were false; (7) the plaintiffs relied
2 on the truth of the facts as represented; (8) plaintiffs Wren had the right to rely on those facts,
3 and in fact were both justified in doing so and did so reasonably; and (9) the Wrens were
4 damaged because defendant Butch Whitehead's conduct induced the Wrens to make loans that
5 would not have been made and caused Stanford and Sons to be unable to repay those loans.

6 4.12 Plaintiffs have been damaged by the actually fraudulent, willful and malicious
7 conduct of defendants Whitehead. As such, defendants Whitehead are liable under both
8 §523(a)(2)(A) and §523(a)(6) for the unpaid principal, interest and late fees, totaling
9 \$1,187,872.89 as of August 1, 2019, plus post-judgment interest accruing at the rate of 16% per
10 annum, fees and costs. Because of the ongoing accrual of liability on that debt, the exact
11 amount owed by defendants Whitehead will be proven at trial.

12 **B Cause of Action No. 2: Liability Under 11 USC §523(a)(2)(A), (a)(4) and (a)(6) of
13 Fraudulent or Voidable Transfers from Defendants and Named Nonparties as
Initial and Subsequent Transferees under RCW Ch. 19.40**

14 Plaintiffs Wren, both personally and as assignees of Stanford and Sons, reallege
15 paragraphs 1.1 through 4.12 as if restated herein in full.

16 4.13 As previously observed, a debtor can be subject to nondischargeable judgments
17 arising from fraudulent conveyances under either or both 11 USC §523(a)(2)(A) and (a)(6).
18 Husky Intern. Electronics, Inc. v. Ritz, 578 U.S. 356, 359 (2016). Fraudulent conveyances are
19 also recoverable under 11 USC §523(a)(4) as embezzlement, if the debtor originally had
20 possession of the property with permission, and as larceny, if without permission. *See In re*
21 Mark E. Phillips, 2016 WL 7383964, pp.*2, 5 (US BAP 9th Cir. 2016) and the wide range of
22 transfers of that company insider found to be nondischargeable on the grounds of
23 embezzlement.

24 4.14 As alleged both here and in the Pierce County Action, the Uniform Fraudulent
25 Transfer Act, RCW 19.40 et seq., for transfers made before July 23, 2017, and the Uniform
26 Voidable Transactions Act, also as codified at RCW Ch. 19.40 et seq., for transfers made on or

1 after July 23, 2017, apply here. As of the time of the filing of this adversary complaint, the
2 amendments made to RCW Ch. 19.40 et seq. have no material impact on the recovery of the
3 particular transfers or transactions at issue.

4 4.15 Stanford and Sons' transfer of assets, which were caused and directed by
5 defendant Herbert L. "Butch" Whitehead III, a member of defendant Whitehead Marital
6 community, to defendant Herbert Whitehead himself, to the marital community of Herbert and
7 Jennifer Whitehead, to his son David "Gage" Whitehead, to their co-conspirator Henry L.
8 "Murphy" Russell II, to the marital community of Henry and Victoria Russell, and to their co-
9 conspirator J & N Investments Inc., were done for the benefit of each of the aforesaid
10 defendants and named nonparty co-conspirators, as well as for the Auto Wholesale Enterprise
11 as a whole, of which enterprise each of the defendants and named nonparty co-conspirators was
12 a member.

13 4.16 Those transfers constituted fraudulent transfers, or alternatively voidable
14 transactions, under RCW 19.40.041 because defendant Butch Whitehead caused Stanford and
15 Sons to make the transfers or incurred the obligations (1) with actual intent to hinder, delay, or
16 defraud plaintiffs Wren, a creditor of Stanford and Sons, as well as Stanford and Sons itself, of
17 which these defendants are debtors; and/or (2) without receiving a reasonably equivalent value
18 in exchange for the transfer or obligation, and at the time of each of the aforesaid transfers or
19 transactions Stanford and Sons (i) was engaged or was about to engage in a business or a
20 transaction for which the remaining assets of Stanford and Sons were unreasonably small in
21 relation to the business or transaction; and/or (ii) that defendants intended to incur, or believed
22 or reasonably should have believed that Stanford and Sons would incur, debts beyond Stanford
23 and Sons' ability to pay as they became due.

24 4.17 Proof of said actual intent or reasonable belief is seen, in part, by the extensive,
25 wide ranging and large size of the transfers of Stanford and Sons' assets, as orchestrated,
26 directed and retained by defendant Butch Whitehead, for the benefit of the Auto Wholesale

1 Enterprise, the J & N Investments Enterprise, and their individual members, which members
2 include David Gage Whitehead, the Russells and J & N, which as stated is also a RCW 9A.82
3 criminal enterprise. Additional relevant facts, as delineated in RCW 19.40.041(b) or .041(2),
4 are pled above, and include the facts that defendants Whitehead and the named nonparty co-
5 conspirators concealed the theft of cash through fraudulent documentation, obtained and
6 retained physical possession of assets of Stanford and Sons, such as the boat, trailer and trucks
7 identified in ¶3.63 of the complaint, and transferred over a relatively short period of time a sum
8 of money that exceeded the \$1,700,000 loans made by plaintiffs Wren to debtor Stanford and
9 Sons.

10 4.18 Stanford and Sons' transfers to defendants Whitehead, Russell and J & N
11 Investments constituted fraudulent transfers, or voidable transactions, under RCW
12 19.40.051(a), and .051(1), because the transfers were made, or the obligations were incurred
13 by, Stanford and Sons without receiving a reasonably equivalent value in exchange for the
14 transfers or obligations, and Stanford and Sons was either insolvent at that time or became
15 insolvent as a result of those transfers or obligations.

16 4.19 Based on the evidence of record, including Butch Whitehead's written statement
17 of July 29, 2019, and David G. Whitehead's written statement of August 8, 2019, the transfers
18 of Stanford and Sons' assets, as detailed in ¶¶ 3.63 & 3.72, to defendants Whitehead constituted
19 voidable transfers under RCW 19.40.051(2) because the transfers were made to insiders of
20 Stanford and Sons, namely the Whiteheads, for an alleged antecedent debt, namely the sums
21 allegedly advanced by David G. Whitehead and/or Herbert "Butch" Whitehead toward the
22 purchase of inventory and other personal property (such as the Pontoon boat); Stanford and
23 Sons was insolvent at the time of the transfers; and defendants and their named nonparty co-
24 conspirators had reasonable cause not only to believe but to know that Stanford and Sons was
25 insolvent because Stanford and Sons had already defaulted on its \$1,700,000 in loans from
26 plaintiffs Wren when defendants Whitehead absconded with said property.

1 4.20 As the aforementioned transfers of Stanford and Sons' assets and property are
2 voidable under RCW 19.40.071, plaintiffs Wren are entitled to avoidance of the transfers
3 pursuant to the same in an amount to be proven at trial but alleged here to be \$1,785,353.97,
4 and/or they are entitled to recover the proceeds or a judgment for the value of the assets
5 transferred against the first transferee and any subsequent transferee, including defendants
6 Whitehead, Russell, J & N Investments, Southwest Enterprises, LLC, Mt. View Enterprises,
7 LLC, Whitehead Consulting, LLC, and Whitehead Enterprises, LLC pursuant to RCW
8 19.40.071 or RCW 19.40.081. All of the above are, furthermore, nondischargeable under
9 §523(a)(2)(A) actual fraud, (a)(4) embezzlement and/or larceny, and (a)(6) willful and
10 malicious injury, because the transfers constituted actual fraud, because they constituted acts of
11 criminal theft, and because they constituted a willful and malicious injury to plaintiffs Wren
12 both in their individual capacities and in their capacity as assignee of Stanford and Sons.

13 **C. Cause of Action 3: For a Nondischargeable Judgment of Replevin Under**
14 **§523(a)(2)(A), (a)(4) and (a)(6) Requiring the Return of Plaintiffs' Personal**
Property, or the Value Thereof

15 Plaintiffs Kenneth and Alice Wren, both personally and as assignees of Stanford and
16 Sons, reallege paragraphs 1.1 through 4.20 as if restated herein in full.

17 4.21 Plaintiffs Kenneth and Alice Wren are the legal owners of the following items.
18 The far-right column of the table below indicates who had physical possession of the vehicle at
19 the time of S&S's default, or with respect to the Yukon, the location of the cash proceeds
20 following sale and deposit pursuant to a state court order. The location of the Skidoo is
21 presently unknown to the plaintiffs, since it is not listed as an asset of the estate, but defendants
22 Whitehead are believed to have been in possession of the same.

Vin #	Description	Est. ACV in US \$	Physical Possession
J9M93AH837784	1979 Jeep CJ7	\$12,500	Whitehead
5N1AA08C58N600152	2008 Nissan Armada	\$6,500	Whitehead

Vin #	Description	Est. ACV in US \$	Physical Possession
1HD1FRW192Y655378	2002 Harley Davidson	\$4,500	Whitehead
1HD1BYB175Y065664	2005 Harley Davidson	\$5,000	Whitehead
2BPSCG7C97V000093	2007 Skidoo	\$2,500	Whitehead
1HD1FC4198Y682119	2008 Harley Davidson	\$7,500	Whitehead
1J4GA39128L583815	2008 Wrangler	\$17,500	Whitehead
1GKFK13097R141732	2007 Yukon	\$8,705	Pierce County Sup. Court Registry
		\$64,705.00	

4.22 With the exception of the cash proceeds from the sale of the 2007 Yukon, defendants Whitehead wrongly retain physical possession and control of the above-identified vehicles. Plaintiffs are lawfully entitled to possession of the same. Because they have no title or right to possession of the same, they are subject to a nondischargeable judgment for embezzlement or larceny under §523(a)(4). That judgment should direct the return of those items in the possession or control of defendants Whitehead pursuant to RCW Ch. 7.64 and the inherent power of this Court, along with payment of the value of those items no longer in defendants' possession.

4.23 Defendants Whitehead are also subject to nondischargeable judgments to the extent that the facts establish that, for instance, they have destroyed, transferred and/or spent the assets subject to an order of Pierce County Superior Court. By way of example, the 2007 Skidoo was the subject of orders entered in that state court, and the whereabouts of either the item or its cash proceeds are not accounted for.

D. Cause of Action No. 4: Fraud, Theft; Malicious Injury

Plaintiffs Kenneth and Alice Wren, both personally and as assignees of Stanford and Sons, reallege paragraphs 1.1 through 4.23 as if restated herein in full.

1 4.24 Through their unlawful conspiracy, defendants stole, fraudulent conveyed and/or
2 were unjustly enriched by an amount to be proven at trial but here alleged to be \$1,785,353.97,
3 as follows:

Description	Amount
Stolen Cash from Canadian Car Sales (Complaint ¶3.60)	\$23,455.00
Stolen Vehicles, Boat, Trailer and Cash (Complaint ¶3.63)	\$184,704.15
Fraudulent Transfers to Butch Whitehead (Complaint ¶¶3.68-3.71)	\$436,750.00
Conversion of title documents for 12 vehicles, plus 6 of the vehicles themselves (Complaint ¶3.72)	\$149,500.00
Fraudulent Transfers to Murphy Russell (Complaint ¶3.50, 3.81, 3.86, 3.90)	\$363,000.00
Conversion of the 2011 Ford Taurus (Complaint ¶¶3.88-.89)	\$9,100.00
Fraudulent Transfers to J & N Investments (Complaint ¶¶3.48, 3.90-93)	\$618,844.82
Total:	\$1,785,353.97

10 Defendants Whitehead are jointly and severally liable for the same.
11

12 4.25 Plaintiffs, both in their individual capacity and as assignees of Stanford and
13 Sons, and were injured by defendants' wrongful conduct. The damages arose from the actual
14 fraud, embezzlement, larceny and willful and malicious actions of defendants Whitehead.
15 Plaintiffs are therefore entitled to a nondischargeable judgment against defendants Whitehead
16 in an amount to be proven at trial but here alleged to be for \$1,785,353.97, pursuant to 11 USC
17 §523(a)(2)(A), (a)(4) and (a)(6). Because they conspired with the named nonparties to steal
18 and wrongly obtain these funds and personal property, defendants Whitehead are jointly and
19 severally liable for the same, even if one of the other named nonparty co-conspirators was the
20 direct beneficiary of a particular conversion of funds or property.

21 **E. Cause of Action No. 5: The Facts of Herbert Whitehead's Breach of
Fiduciary Duties Constitute a Nondischargeable Debt Under §523(a)(4)**

22 Plaintiffs Kenneth and Alice Wren, both personally and as assignees of Stanford and
23 Sons, reallege paragraphs 1.1 through 4.25 as if restated herein in full.

24 4.26 By inducing Kenneth Brautigan to permit Herbert Whitehead to exercise
25 authority over Stanford and Sons' assets and employees that is ordinarily reserved for an
26

1 owner, defendant Herbert “Butch” Whitehead created and assumed to Stanford and Sons, LLC,
2 d/b/a PCAT, a wide variety of fiduciary duties, including but not limited to:

- 3 a. The duty to deal with PCAT and its actual owner with candor and the utmost
4 good faith;
- 5 b. The duty of loyalty and care to both the business entity and to the actual
6 member;
- 7 c. The duty of loyalty to avoid secret profits, self-dealing, and conflicts of interest;
- 8 d. The duty to avoid self-dealing by refraining from dealing with the business
9 entity on behalf of a party having an interest adverse to the business entity;
- 10 e. The duty to avoid conflicts of interest in refraining from competing with the
11 business entity; and
- 12 f. The duty of care to refrain from engaging in grossly negligent conduct,
13 intentional misconduct, and knowing violations of law.

14 4.27 While a breach of state fiduciary duties is not necessarily nondischargeable
15 under the various provisions of 11 USC §523(a)(2) to (6), the same conduct that can give rise to
16 the violation of such a state duty can be nondischargeable. The case of In re Mark E. Phillips,
17 2016 WL 7383964 (US BAP 9th Cir. 2016), which arose in Washington and thus was decided
18 to some extent by reference to Washington law, is a good example of this. For instance, in that
19 case there were series of state law findings of fact and conclusions of law related to debtor
20 Phillips, which included findings that the debtor acted in bad faith in a number of unauthorized
21 transactions, that there were no business justification for a number of those transactions, that
22 there were no records justifying “consulting fees” paid to the debtor, that the debtor failed to
23 keep accurate company financial records, that the debtor engaged in related-party transactions
24 without corporate authorization, that the debtor caused the company to make improper
25 payments to the debtor, that the debtor caused the company to pay the debtor’s personal
26 obligations, and that the debtor failed to ensure that loan payments were repaid, all of which

1 have close factual parallels to the case at bar. The Phillips court then upheld a summary
2 judgment ruling that the debts were nondischargeable as §523(a)(4) embezzlement debts.

3 4.28 Thus, as with Mark Phillips, plaintiffs contend that defendant Herbert “Butch”
4 Whitehead’s actions, which breached his fiduciary duties to Stanford and Sons, created a
5 nondischargeable debt under at least §523(a)(4). The exact amount of that liability will be
6 proven at trial, but plaintiffs contend that it should include a forfeiture of his right to retain any
7 of the \$436,750 he received from PCAT between March 2016 and June 2019.

8 4.29 Based on Stanford and Sons’ assignment of all of its causes of action to
9 plaintiffs, plaintiffs are entitled to recover these \$436,750 in damages flowing from Butch
10 Whitehead’ breach of fiduciary duties.

11 **F. Cause of Action No. 6: Fraud and Theft in Violation of RCW Chapter 9A.82
12 Are Nondischargeable Debts under §523(a)(2)(A), (4) and (6)**

13 Plaintiffs Kenneth and Alice Wren, both personally and as assignees of Stanford and
14 Sons, reallege paragraphs 1.1 through 4.29 as if restated herein in full.

15 4.30 The constituent members of the Auto Wholesale Enterprise are Herbert L.
16 Whitehead III, the marital community of Herbert L. and Jennifer L. Whitehead, David G.
17 Whitehead, Henry L. Russell II, the marital community of Henry and Victoria Russell, and J &
18 N Investment Inc. Stanford and Sons, LLC, is the entity used by said constituent members as
19 the primary source of funds stolen during their scheme. Each of those Auto Wholesale
20 Enterprise members, including defendants Whitehead, is a principal and control person of the
21 Enterprise, and each is jointly and severally liable with the others for the damages caused by
22 that Enterprise, whether through a judgment here or in the Pierce County Action.

23 4.31 Within the last five years, the Auto Wholesale Enterprise members have
24 committed vastly more than three separate acts of criminal profiteering that form a pattern of
25 criminal profiteering within the meaning of RCW 9A.82.010(4) and (12). Those actions also
26 give rise to debts that are nondischargeable under 11 USC §523(a)(2)(A), (4) and (6).

4.32 The facts giving rise to this lawsuit were not reasonably discoverable until July 2019, when Stanford and Sons defaulted on its loans to the Wrens. Thus, these claims are timely under RCW 9A.82.100(7), given the filing of the original action in Pierce County Superior Court in January 2020.

4.33 The purpose of the fraudulent scheme executed by the Auto Wholesale Enterprise, including the J & N Investments Enterprise, was the financial gain of each of its constituent members through the theft of Stanford and Sons' financial resources, which originated with the \$1,700,000 in loans received from plaintiffs Wren. This criminal conspiracy was successful because, through their machinations, the Auto Wholesale Enterprise Members enriched themselves at the expense of plaintiffs and Stanford and Sons in the approximate amount of \$1.7 million.

4.34 As a result of the aforementioned pattern of criminal profiteering activity, the Auto Wholesale Enterprise Members, including defendants Whitehead are liable to plaintiffs pursuant to RCW 9A.82.100(1)(a) for single damages in an amount to be proven at trial but alleged here to be at least \$1,785,353.97, and pursuant to RCW 9A.82.100(4), for treble damages, along with the costs of suit, including reasonable investigative and attorney's fees.

4.35 Further, the Auto Wholesale Enterprise, including its constituent member defendant Herbert "Butch" L. Whitehead III, is each subject to orders of the type specified in RCW 9A.82.100(4), including but not limited to orders restricting his future activities, e.g., prohibiting him personally, and as a leader of the Auto Wholesale Enterprise, from operating in the wholesale or retail car and truck industries, plus requiring forfeiture as restitution of any property gained in part or whole from proceeds of that pattern of criminal profiteering activity.

IV. PRAYER FOR RELIEF

WHEREFORE Plaintiffs Kenneth and Alice Wren pray, both in their personal capacity and as assignees of Stanford and Sons, for entry of nondischargeable judgments under 11 USC

1 §523(a)(2)(A), (4) and (6) against Herbert L. Whitehead III, and the marital community of
2 Herbert L. Whitehead III and Jennifer L. Whitehead as follows:

3 A. For an award of single damages against defendants Whitehead in the amount of
4 totaling \$1,187,872.89, plus post-judgment interest accruing at the rate of 16% per annum, fees
5 and costs as of August 1, 2019, as a result of defendants Whiteheads' actual fraud and willful
6 and malicious injury in inducing plaintiffs Wren to loan Stanford and Sons \$1,700,000. The
7 determination of any credits from other net recoveries by plaintiffs must await the conclusion
8 of all related matters;

9 B. For an Order of this Court that all transfers of Stanford and Sons' assets to
10 defendants, in an amount to be proven at trial but here estimated to be \$1,785,353.97, be set
11 aside and avoided, and that defendants Whitehead be held liable for the same under 11 USC
12 §523(a)(2)(A), (4) and (6);

13 C. For a joint and several judgment against defendants Whitehead as a result of the
14 fraudulent transfers complained of herein requiring those defendants to reconvey the assets so
15 transferred, to the extent the items transferred are still in their possession, and for the proceeds
16 or for the value of the assets otherwise transferred in an amount to be proven at trial but here
17 alleged to be \$1,785,353.97;

18 D. For an award of replevin of the following personal property:

Vin #	Description	Est. ACV in US \$	Physical Possession
J9M93AH837784	1979 Jeep CJ7	\$12,500	Whitehead
5N1AA08C58N600152	2008 Nissan Armada	\$6,500	Whitehead
1HD1FRW192Y655378	2002 Harley Davidson	\$4,500	Whitehead
1HD1BYB175Y065664	2005 Harley Davidson	\$5,000	Whitehead
2BPSHG7C97V000093	2007 Skidoo	\$2,500	Whitehead
1HD1FC4198Y682119	2008 Harley Davidson	\$7,500	Whitehead
1J4GA39128L583815	2008 Wrangler	\$17,500	Whitehead

Vin #	Description	Est. ACV in US \$	Physical Possession
1GKFK13097R141732	2007 Yukon	\$8,705	Pierce County Sup. Court Registry
		\$64,705.00	

E. For an award against Herbert Whitehead III and his marital community for \$436,750, for the nondischargeable debts arising from Whitehead's breach of fiduciary duties that also constitute violations of §523(a)(4);

F. A joint and several award pursuant to the terms of RCW Ch. 9A.82.100 against the defendants in favor of plaintiffs pursuant to RCW 9A.82.100(1)(a) for single damages to be proven at trial but alleged to be \$1,785,353.97, for treble damages pursuant to RCW 9A.82.100(4), along with the costs of suit, including reasonable investigative and attorney's fees as contemplated by statute;

G. For the issuance or grant of relief as permitted by the terms of RCW 9A.82.100(4), including but not limited to the issuance of injunctions against defendants Whitehead prohibiting them from operating in the automobile wholesale or resale industry;

H. For prejudgment interest;

I. For attorneys' fees and costs; and

J. For such other and further relief that the Court deems proper.

DATED this 16th day of May, 2022.

KINSEL LAW OFFICES, PLLC

By /s/ William A. Kinsel
William A. Kinsel, WSBA # 18077
Attorneys for Creditors Kenneth and Alice
Wren

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